

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.7757/Mum/2014
(निर्धारण वर्ष / Assessment Year :2010-11)

Mitsui OSK Lines (India) Pvt Ltd, Unit No.53B&54. 5 th floor, Kalpataru Square, Kondivita Lane, Off Andheri Kurla road, Andheri (E), Mumbai-400059	बनाम/ Vs.	Dy.Commissioner of Income Tax -8(2), Aayakar Bhavan, M.K.Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AADCMO823B

अपीलार्थी ओर से / Appellant by:	Smt. Aarti Vissanji
प्रत्यर्थी की ओर से/Respondent by	Shri Randhri Gupta

सुनवाई की तारीख / Date of Hearing : 3.8.2016

घोषणा की तारीख /Date of Pronouncement : 22.8.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Ld. CIT(A)-17, Mumbai dated 11.9.2014 pertaining to A.Y.2010-11.

2. The issues raised in ground No.1(b) is in respect of confirmation of Rs.7,30,755/- for un-reconciled entries on account of non-reconciliation of AIR information and ground no 1(c) is qua non adjudication of ground raised

in respect of Rs.2,48,631/- appearing in AIR in respect of those parties with whom the assessee denied to have any business dealings.

3. Facts of the case are that the assessee filed its return of income on 28.9.2010 declaring total income at Rs.74,92,150/- which was processed u/s 143(1) of the Act on 26.4.2011. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. The assessee was engaged in the business of shipping and logistic services and trading in pallets. During the course of assessment proceedings, the AO on the basis AIR information, the AO asked the assessee to furnish the details of transaction along with the reconciliation with its books of account. However, the assessee could not explain the difference of Rs.1,52,69,815/- the details whereof is given in para 6.1 of the assessment order and therefore the same was treated as income and accordingly added to the total income of the assessee by passing the order of assessment under section 10.12.2014 under section 143(3) assessing the total income at Rs.2,27,61,970/- under the normal provisions of the Act and at Rs.68,28,591/- under the provisions of section 115JB of the Act. Aggrieved by the order of the AO the assessee preferred an appeal before the first appellate authority. During the course of appellate proceedings, the assessee filed additional evidences before the Id. CIT(A) who in turn forwarded the same to the AO for further verification. In the remand report, the AO submitted that the additional evidence submitted

by the assessee and revised form No. 26AS, the difference to the tune of Rs.1,45,39,060/- was reconciled which related to one party namely Diamond Trading and Consultancy Ltd was duly accounted for in the books of assessee. However, the AO stated that the assessee could not reconcile Rs.7,30,755/- and submitted that no relief could be granted in respect of the said amount. Finally, the Id. CIT(A) allowed the appeal of the assessee partly vide para 1.3.8 of the appellate order which is as under :

"1.3.8 Adverting to the facts of the appellant case, it is seen that all the basis of additional evidences and revised 26AS, it was confirmed by the Ld.AO that the appellant has reconciled the transactions amounting to Rs.1,45,39,060/- with respect of Diamond Trading and Consultancy Ltd. reported in the AIR with the appellant's books. It can be seen that such reconciliation is primarily on the fact that appellant has not transaction with the Diamond Trading and Consultancy Ltd. The fact which was ratified by the party by devising its TDS return. Therefore, the addition made by the Id. AO in respect of un-reconciled amount in relation to Diamond Trading and Consultancy Ltd is deleted as the same stand fully justified undoubtedly, there is added in the contention of he appellant that AO should have issued notices under section 131 or under section 133(6) of the Act to verify the transaction in question after admission of the appellant that these transactions do not belong to it. However, after such a lapse of time it is also a duty of the appellant to contact the parties to clarify the position as it had done in the case of Diamond Trading and Consultancy Ltd. However, the appellant has not resorted to such efforts which resulted in non-reconciliation of transactions amounting to Rs.7,30,755/ -. Therefore, the unreconciled transactions are added back to the total income of the appellant, this ground of appeal is thus partly allowed"

4. The Id. AR vehemently argued that the addition as sustained by the Id. CIT(A) on the basis of AIR information and revised form 26AS was wrong the assessee has no business transactions with those parties appearing in AIR/form26AS and any addition made on the basis of AIR information/form

No.26AS were bad in law and deserved to be deleted. The Id. counsel submitted that if at all the AO had any doubts he could have issued summons under section 133(6) of the Act and should have carried out further investigation into the issue as he has all the information in his possession but instead of it he simply proceeded to add the income to the total income of the assessee which was also confirmed by the Id. CIT(A). The Id. AR submitted that the case of the assessee is fully covered by the decision of Mumbai Bench of the Tribunal in the case of ACIT V/s BLR India Pvt Ltd in ITA No.5556/Mum/2013(AY-2008-09) dated 11.4.2016 in which the identical issue has been decided by the Tribunal in favour of the assessee. The Id. AR finally relied on the decision of the co-ordinate bench of the Tribunal and prayed for deletion of addition. On the contrary, the Id DR relied on the orders of the authorities below and submitted that the addition was based on the entries as appeared in the AIR information/Form No.26AS as the assessee could not reconcile or offer any plausible explanation and prayed for the confirmation of the order of Id. CIT(A).

5. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the addition has been made qua unreconciled entries appearing in the AIR information/Form No.26AS which was totally denied by the assessee that it had never any business transactions with these parties during the year. We further find that

the AO has not bothered to investigate the matter further and simply added the amount of un-reconciled entries in the income of the assessee. The case of the assessee also finds strong support from the decision in the case of ACIT V/s BLR India Pvt Ltd (supra) in which identical issue has been decided in favour of the assessee. The relevant portion of the decision is reproduced below :

"6. We have considered the rival submissions and perused the material on record. The Id. DR submitted before us that the assessee was not able to re-concile the difference between the books of account with the AIR information and therefore, the addition was rightly made. Per contra, the Id. AR submitted before us that reconciliation of AIR data is not possible with the books of accounts as the information in the AIR were not put into the computer by the assessee but by those parties who deducted the TDS from the contractual payments made to the assessee. Thus there was every possibility that some deducted tax at sources on payment basis whereas others on accrual basis and in some cases might have wrongly deducted the TDS. The AR further submitted that the total sales as shown in the books of accounts were Rs.2,42,06,01,170/- whereas the total sales in AIR report were Rs. 48,42,51,354/- which is just 20% of the total sales of the assessee. Out of the said AIR entries the assessee had reconciled the entries amounting to Rs.46,97,07,933/- meaning thereby that 97% of the AIR entries were reconciled by the assessee. The difference mismatch might be due to faulty return filed by the 3rd party. The Id. AR further submitted that in order to verify the un-reconciled items of AIR information, the AO has sent notice under section 133(6) to various parties on the addresses provided in the AIR information twice but all the notices were returned back undelivered to the department which proved that the AIR information could not be relied upon to make addition in the hands of the assessee. The Id. AR further submitted before us that the issue was covered in favour of the assessee by the decision of co-ordinate Bench in its own case in ITA No. 3057/Mum/2012(AY-2007-08) dated 24.5.2013. The Id.AR also relied upon the decision of the Tribunal in the case of Shri S Ganesh V/s ACIT in ITA No.527/Mum/2010 (AY 2006-07) dated 8.12.2010, wherein it has been held that in absence any record contrary to the fact, the revenue authorities could not make any addition on account of AIR information. We find from the above, that the case of the

assessee is squarely covered by its own decision in M/s. BLR India Pvt. Ltd (supra) the relevant findings of the said order are reproduced below :

"2.4. We have heard the rival submissions and perused the material before us. We find that the assessee had shown higher income than the income reported in the report received by the AO. It reconciled all the accounts wherever ledger entries were made available to it. Only in one case he could not reconcile the entries. From the RR of the AO it is evident that the facts narrated by the FAA (para 2.2) are correct and based on sound footings. FAA had upheld a portion of addition where assessee had failed to reconcile the figure. In our opinion, in these circumstances, his order does not suffer from any factual or legal infirmity. Therefore, confirming his order we decide Ground No.1 against the AO."

We therefore, following the decision of the co-ordinate bench of the Tribunal uphold the order of the Id. CIT(A). This ground of appeal is dismissed and the AO is directed accordingly."

6. The facts of the assessee's case are squarely covered by the decision cited (supra) and we respectfully following the ratio laid down in the above decision, direct the AO to delete the addition.

7. In the result the appeal of the assessee is allowed.

The above order was pronounced in the open court on 22nd Aug, 2016.

घोषणा खुले न्यायालय में दिनांक: 22nd Aug,2016 को की गई ।

Sd/-

(SHAIENDRA KUMAR YADAV)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 22nd Aug, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai

		Date	Initials	
1.	Draft dictated on	3.8.2016		SPS
2.	Draft placed before author	17.8.2016		SPS
3.	Draft proposed & placed before the Second Member			JM
4.	Draft discussed/approved by Second Member			AM
5.	Approved Draft comes to the Sr. PS			SPS
6.	Kept for pronouncement on			SPS
7.	File sent to the Bench Clerk			SPS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to A.R.			
10.	Date of dispatch of order			