

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं/ I.TA Nos. 3853 to 3855/Mum/2014

(निर्धारण वर्ष / Assessment Year:2006-07 to 2008-09

M/s. Gennex Cresa Partners Consultants Pvt. Ltd., S-202, Nimbus Centre, Oberoi Complex, Andheri (W), Mumbai-400 053	बनाम/ Vs.	The ITO, Ward 8(1)(4), Aayakar Bhavan, Mumbai-400 020
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आयकर अपील सं/ I.TA Nos. 4480 to 4482/Mum/2014

(निर्धारण वर्ष / Assessment Year:2006-07 to 2008-09

The ITO, Ward 8(1)(4), Aayakar Bhavan, Mumbai-400 020	बनाम/ Vs.	M/s. Gennex Cresa Partners Consultants Pvt. Ltd., S-202, Nimbus Centre, Oberoi Complex, Andheri (W), Mumbai-400 053
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AACCG 6878K

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Assessee by:		Shri Firoze Andhyarujina
प्रत्यर्थी की ओर से/Revenue by:		Shri Shrikant Namdeo

सुनवाई की तारीख / Date of Hearing :04.01.2016

घोषणा की तारीख /Date of Pronouncement :04 .01.2016

आदेश / ORDER

PER BENCH:

ITA Nos. 3853, 3854 & 3855/M/2014 are appeals by the assessee against three separate orders of the Ld. CIT(A)-16 for assessment years 2006-07 to 2008-09 and ITA Nos. 4480, 481 & 4482/M/2014 are cross appeals by the Revenue against the respective orders of the Ld. CIT(A) for assessment years 2006-07 to 2008-09. This bunch of appeals was heard together as issues involved are common and are disposed of by this common order for the sake of convenience.

2. At the very outset, the Ld. Counsel for the assessee stated that in all the appeals by the assessee the additions made u/s. 148 have been challenged qua the reasons recorded for reopening. As this issue goes to the root of all the assessment under consideration, we proceed by deciding this issue first.

3. The grievance of the assessee reads as under:

“The Ld. CIT(A) erred in confirming the addition made by the Ld. AO. In spite of the fact that no additions were made for reasons recorded for reopening u/s. 148 & erred in not following Jurisdictional High Court’s & other High Courts decision.”

4. It was further agreed by the representatives of both sides that facts in issues relating to the aforementioned grievance are identical in all the years under consideration. On this concession of the rival representatives, we proceed by considering the facts for assessment year 2006-07 in ITA No. 3853/M/2014.

5. Facts of the case show that the original return of income was filed on 30.11.2006 declaring total income at Rs. 11,17,249/-. The

return of income was duly processed u/s. 143(1) of the Act. The said order u/s. 143(1) was subject to a rectification order passed on 5.8.2010.

5.1. On perusing the details vis-à-vis the TDS certificate, the Assessing Officer noticed that in the profit & loss account the assessee has offered income of Rs. 1,62,20,109/- which included other income of Rs. 11,71,955/- and income from services rendered amounting to Rs. 1,50,48,154/-. The AO further found that as per the TDS certificate, the assessee has received professional fees of Rs. 1,54,63,228/- and commission of Rs. 4,83,869/- totaling to Rs. 1,59,47,097/-. The AO compared this income as per the TDS certificate with the income shown in the profit & loss account, the total of which was shown at Rs. 1,50,48,154/-. The AO was of the firm belief that professional fees and commission amounting to Rs. 8,98,943/- was not disclosed by the assessee,

5.2. The assessment was reopened and accordingly statutory notice u/s. 148 was issued. The reassessment proceedings started, queries were raised and complied by the assessee and finally the reassessment order was made at an income of Rs. 1,10,14,930/-.

5.3. The reassessment order was challenged before the Ld. CIT(A) on the ground that the additions made by the AO are other than the reasons recorded and hence the reopening is bad in law. However, this challenge of the assessee did not find any favour with the Ld. CIT(A).

6. Aggrieved, the assessee is before us. The Ld. Counsel for the assessee straightaway drew our attention to the reasons recorded for reopening of the assessment which is placed at exhibit-12 and 13 of the Paper Book. The Ld. Counsel further drew our attention to the impugned assessment order and pointed out that no additions have been made for the reasons for which the assessment was reopened. The Ld. Counsel vehemently stated that this is against the settled proposition of law laid down by the Jurisdictional High Court of Bombay in the case of CIT Vs Jet Airways (I) Ltd in 331 ITR 236.

7. Per contra, the Ld. Departmental Representative could not bring any distinguishing decision in favour of the Revenue.

8. We have given a thoughtful consideration to the orders of the authorities below. With the assistance of the Ld. Counsel, we have also considered the relevant documentary evidences brought on record and referred to before us. The reasons recorded for reopening of the assessment read as under:

To:

The Principal Officer,
M/s. Gennex Cresa Partners Consultants Pvt. Ltd.,
S-202, Nimbus Centre,
Oberoi Complex,
Andheri (W),
Mumbai-400 053

Dear Sir,

Sub : Intimation of reasons for re-opening the assessment u/s. 147
of the I.T. Act for A.Y. 2006-07- reg

In this regard, your assessment for the A.Y. 2006-07 has been reopened for the following reasons:

The assessee has filed return for A.Y. 2006-07 on 28.11.2006 declaring total income of Rs. 11,17,249/-. The return of income was processed u/s. 143(1) on 28.1.2008. Vide letter dt. 12.3.2010, the assessee submitted the copies of balance sheet, profit & loss account, TDS certificates etc and requested for credit of TDS. Accordingly, rectification order u/s. 154 was passed on 5.8.2010. On going through the TDS certificates and P&L account, it is found that the assessee has offered income of Rs. 1,62,20,109/- inclusive of other income of Rs. 11,71,995/- and income from services rendered amounting to Rs. 1,50,48,154/-. However, as per the TDS certificates submitted by the assessee, it is seen that the assessee has received income as under:

Income as per TDS Certificate		Income as per Return	
1. Professional Fees		(i) Revenue from transaction services	7607201
(i) Santhosh Wilson	199021	(ii) Valuation fees	377500
(ii) Dewan Housing Finance Corpn. Ltd.	82650	(iii) Affiliation fees	345000
(iii) Bharat Petroleum Corpn. Ltd.,	149220	(iv) Indirect incomes	12926
(iv) Golf Links Software Park P. Ltd.	6099266	(v) Facility Management	370712
(v) Nvidia Graphics P. Ltd	8767771	(vi) Project management Bangalore	2622315
(vi) Halcrow Consulting India Ltd	165300	(vii) Project management 3 Pune	3712500
	15463228		15048154
II Commission		Other Income	
(i) Birla Sunlife Insurance Co. Ltd.	116371	(i) Dividend income	883031
(ii) Honeywell Automation (I) Ltd	86987	(ii) Exchange Rate Difference	8664
(iii) Metlife India Insurance Co. P. Ltd	148271	(iii) Long Term Capital Gain	242833
(iv) PBC Ventures Ltd	52896	(iv) Short Term Capital Gain	37427
(v) Vatika Hospitality P.Ltd	79344		
	483869		1171955
	15947097		16220109

As per TDS Certificates, the assessee has received professional fees of Rs. 1,54,63,228/- and Commission of Rs. 4,83,869/- totaling to Rs. 1,59,47,097/-. However, it has offered to tax revenue from transaction services of Rs. 76,07,201/-, valuation fees of Rs. 3,7,50/-, Affiliation fees of Rs. 3,45,000/-, Indirect incomes of Rs. 12,926/-, Facility Management of Rs. 3,70,712/-, Project Management (Bangalore) of Rs. 26,22,315/- and Project management (Pune) of Rs. 37,12,500/- totaling Rs. 1,50,48,154/- resulting

into not disclosing the total income received under the head of Professional Fees and Commission amounting to Rs. 8,98,943/- (Rs. 1,54,63,228/- -Rs. 1,50,48,154/-).

In view of the above, it is crystal clear that the assessee has not offered income of Rs. 8,98,943/- pertaining to Professional fees and Commission earned during the F.Y. 205-06 relevant to A.Y 2006-07. Hence, I have reason to believe that professional fees and commission income amounting to Rs. 8,98,943/- has escaped assessment within the meaning of Sec. 147 of the I.T. Act. Hence the assessment in the case of M/s. Gennex Cresa Partners Consultants Pvt. Ltd for A.Y. 2006-07 is hereby reopened u/s. 147 by issue of notice u/s. 148 of the I.T. Act.

In this regard, you are requested to furnish objections/submissions, if any on 21.4.2011.

Yours faithfully,

Sd/-

(EKNATH ABHANG)

Income Tax Officer 8(1)-4, Mumbai

9. A perusal of the aforementioned reasons shows that the assessment was reopened on the pretext that income of Rs. 8,98,943/- has escaped assessment within the meaning of Sec. 147 of the Act.

9.1. Keeping in mind the aforementioned reasons and the quantum of income alleged to have been escaped assessment, the AO has completed the assessment as under:

Business income as per computation of the assessee		8,36,989
Add: As discussed above		
(i) Disallowance u/s. 14A (para-7)	41,140/-	
(ii) Business promotion expenses (para-8)	49,169/-	
(iii) Out of pocket expenses u/s. 40A(2)(b) (Para-9)	5,07,600/-	
iv) Salary Expenses (para-10)	9,12,500/-	
(v) Commission expenses (para-11)	5,81,276/-	
(vi) Professional fees expenses (para-12)	77,91,807/-	

(vii) Unexplained expenditure u/s. 69C (para-13)	2,57,020/-	1,01,40,512
Income from Business & Profession		1,09,77,501
Long Term Capital Gain	2,42,833/-	
Less: Exempted	2,42,833/-	-----
Short term capital gain		37,427
Total income		1,10,14,928
Rounded off to Rs.		1,10,14,930

9.2. A perusal of the aforementioned computation of assessed income show that there is no addition not even a whisper of the income of Rs. 8,98,943/- alleged to have escaped assessment vide reasons for reopening the assessment. The Hon'ble Jurisdictional High Court of Bombay in the case of Jet Airways (supra) inter alia held as under:

“However, if after issuing a notice u/s. 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice u/s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee”.

9.3. As mentioned elsewhere, no additions have been made on account of income which forms a reason to believe as escaped assessment. Respectfully following the findings of the Hon'ble Jurisdictional High Court of Bombay (supra), in our considered opinion, the reassessment order is bad in law and deserves to be vacated. We hold accordingly. Grievance raised vide ground No. 1 is allowed.

9.4. This makes all other grievances infructuous and the cross appeals by the Revenue otiose.

10. In the result, the appeals filed by the assessee are allowed and the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 4th January, 2016.

Sd/-

(SAKTIJIT DEY)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 4th January, 2016

व.नि.स./ Rj , Sr. PS

Sd/-

(N.K. BILLAIYA)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 4th January, 2016

व.नि.स./ Rj , 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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai