

INCOME TAX : Where difference between amount shown as turnover by assessee and as reflected in Form 26AS took place due to wrong data entry/information and lack of corresponding services by deductee to deductor, Form 26AS alone could not lead to addition of income

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IN THE ITAT KOLKATA BENCH 'A'

Income-tax Officer, Ward - 43(2), Kolkata

v.

Star Consortium*

J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

AND A.T. VARKEY, JUDICIAL MEMBER

IT. APPEAL NO. 04 (KOL.) OF 2020

C.O. NO. 8 (KOL) OF 2020

[ASSESSMENT YEAR 2009-10]

APRIL 7, 2021

Section 68 of the Income-tax Act, 1961 - Cash credit (Verification of genuineness) - Assessment year 2009-10 - Assessee firm was engaged in business of handling, maintaining, cleaning of aircrafts etc. - Assessing Officer observed from a perusal of Form 26AS that assessee had received payment from different sources/airlines and since there was a difference between amount shown as turnover by assessee and as reflected in Form 26AS, Assessing Officer asked assessee to explain difference - Assessee explained that discrepancy occurred due to wrong data/information filed by payee Airlines - Assessee stated that ground handling business was taken over by another company and alleged amount related to said company - Assessee submitted that goof-up took place in office of TDS deductor while filling Form 26AS as assessee's PAN had been entered wrongly for period which services were not claimed to have been rendered by assessee firm and relevant bills were not claimed to have been raised by assessee firm on Airlines - However, according to Assessing Officer, assessee delayed in submitting details during assessment proceedings and, thus, he made additions to income of assessee - Commissioner(Appeals) deleted addition, holding that Form 26AS alone could not lead to addition of income if claims were made of wrong data entry/information and lack of corresponding services by deductee to deductor - Whether only a mismatch between TDS certificate (26AS) and turnover shown by assessee in its profit and loss account could not be sole basis on which entire addition of difference could have been brought to tax - Held, yes - Whether view taken by Commissioner(Appeals) seemed to be a plausible view and, accordingly, his action of deleting addition was to be confirmed - Held, yes [Para 6]. [In favour of assessee]

Supriyo Paul, Addl. CIT *for the Appellant*. **S.M. Surana**, Sr. Adv. *for the Respondent*.

ORDER

A.T. Varkey, Judicial Member. — This is an appeal preferred by the Revenue and the cross objection filed by the assessee against the order of Ld. CIT(A)-13, Kolkata dated 14.10.2019 for Assessment year 2009-10.

2. The main grievance of the revenue which it has raised by preferring an appeal is against the action of Ld. CIT(A) in deleting the addition of Rs. 2,14,35,593/- and the assessee by preferring cross objection is against the action of Ld. CIT(A) in estimating the net profit at 11.17% to match the TDS vis-à-vis additional turnover estimated by the AO, when according to assessee the net profit it had disclosed on its turn over from the same source which was accepted by both the Ld. CIT(A) & AO is at the tune of 1.22%.

3. Brief facts of this case as noted by the AO are that the assessee firm was engaged in the business of handling, maintaining, cleaning of aircrafts etc. The AO noted that the main business of the assessee firm was with M/s Kingfisher Airlines Ltd. The AO noted that the assessee has rendered such services to M/s Star Consortium Aviation Services Pvt. Ltd., Spicejet etc. The AO observed from a perusal of the profit and loss account that assessee has shown income at Rs. 3,31,50,625/- from aircraft handling & cleaning charges and other income of Rs. 8,36,938/- totaling Rs. 3,39,87,563/-. However, the AO noted from a perusal of Form 26AS that the assessee has received payment from different sources including M/s Kingfisher Airlines was at Rs. 5,54,23,156/-. And since there was a difference between the amount shown as turnover by the assessee and as reflected in Form 26AS, the AO asked the assessee to explain the difference. Pursuant to Show Cause Notice (SCN), the assessee contended that the difference of Rs. 2,14,35,593/-(5,54,23,156/- - 3,39,87,563/-) is not their income and they have not understated their income/turnover in anyway. It was also explained by the assessee that discrepancy occurred was due to wrong data/information filed by the payee Airlines. Further the assessee stated that the ground handling business was taken over by M/s Star Consortium Aviation Services Pvt. Ltd. from 01.06.2008 and the alleged amount relates to the said company and not to them and highlighted the amount in Form 26AS that was received by them for rendering services as aircraft handling and cleaning charges. The Ld. A.R further stated that they have not claimed any credit for TDS of the bills which are shown in Form 26AS which are not part of their turnover. The AO acknowledges that the assessee also furnished some copies of the communications it had with the Airlines showing transfer of business and other related matters. However, according to AO the assessee delayed in submitting details during the assessment proceedings and only started appearing before him on 29.11.2011 and therefore he did not get any opportunity to cross-verify the veracity of the claim. Therefore, the AO concluded that "in the circumstances, as extremely evident from an authentic source such as Form No. 26AS the amount of Rs. 2,14,35,593/- is considered to have been kept concealed by the

assessee thus added to the total income" and thereafter he made an addition of Rs. 2,14,35,593/-.

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition. However sustained Net Profit (NP) at 11.17% of Rs. 2,14,35,593/-. The revenue is in appeal against the deletion of Rs. 2,14,35,593/- and the assessee's cross-objection (CO) is against the action of Ld. CIT(A) in estimating NP at 11.17% of turnover of Rs. 2,14,35,593/- whereas the assessee has shown NP at 1.22% of its reflected turnover which has been accepted by the AO and Ld. CIT(A).

5. We have heard both the parties and perused the records. We note that the assessee firm was engaged in the business of ground handling, maintaining, cleaning of aircrafts etc. According to AO, the main business of assessee firm was with M/s Kingfisher Airlines Ltd. and also the assessee used to render services to M/s Spicejet, M/s Star Consortium Aviation Services Pvt. Ltd. etc. The AO while going through the profit and loss account noted that the assessee had shown turnover of Rs. 3,31,50,625/- from aircraft handling & maintaining charges and other income of Rs. 8,36,938/- totaling of Rs. 3,39,87,563/- whereas Form 26AS reflected that assessee received an amount of Rs. 5,54,23,156/-. Thus the AO noted that there was a difference of turnover of Rs. 2,14,35,593/-. The AO was of the prima facie opinion that this difference in amount was understated income of the assessee. So he called upon the assessee to explain the difference in income/turnover. Though the AO acknowledges that the assessee had submitted that the discrepancy had happened due to wrong data/information filed by the payees/M/s Kingfisher Airlines in Form 26AS and that the ground handling business was taken over by M/s Star Consortium Aviation Services Pvt. Ltd. from the assessee firm on 01.06.2008 onwards; and the said amount (Rs. 2,14,35,593/-) relates to the said company [M/s Star Consortium Aviation Services Pvt. Ltd.] for rendering service to M/s Kingfisher. And it was pointed out to the AO that the assessee had received from M/s Kingfisher Airlines the amount for aircraft cleaning charges only and other remittance must be wrongly shown as remitted to the assessee in the Form 26AS, whereas it must have been paid by M/s Kingfisher as the ground handling charges paid to M/s Star Consortium Aviation Services Pvt. Ltd.. In order to support its contention the assessee also furnished copies of communication it had with M/s Kingfisher Airlines as well as documents to substantiate the transfer of business of ground handling from 01.06.2008 on wards to M/s Star Consortium Aviation Services Pvt. Ltd.. However, the AO was of the opinion that there was no time/opportunity for him to cross-verify these facts due to paucity of time and therefore he made an addition of Rs. 2,14,35,593/-. On appeal, the Ld. CIT(A) has deleted the addition, after taking note that AO has first raised the mismatch between the turnover shown in the profit and loss account and Form 26AS only on 07.12.2011 and the assessee pursuant to the same duly responded on 13.12.2011 in respect of mismatch. Therefore, the Ld. CIT(A) was of the opinion that the AO's contention that he could not cross-verify the veracity of the facts brought to his notice since the assessee had delayed in giving reply does not have merits because the AO has passed the assessment order on 14.12.2011 when the fact remains that the SCN in respect of mismatch at the first instance was raised by the AO only on 07.12.2011 and since

the assessee replied to it vide letter dated 13.12.2011, it does not lie in the mouth of the AO to say that the assessee delayed in giving reply in respect of mismatch. And we agree with the said findings of the Ld. CIT(A) because the AO raised the question of difference of turnover from the P & L account filed by the assessee and the Form 26AS only on 07.12.2011 and the assessee replied to AO on 13.12.2011, that i.e. within six (6) days, which is a reasonable period to reply to SCN. And thereafter on 14.12.2011 the AO passed the assessment order. So he cannot blame the assessee for not giving him time to cross-verify the contention/explanation given by the assessee in respect to the mismatch as discussed supra. So we concur with the Ld. CIT(A) on this finding.

6. It is noted that while explaining the mismatch, the assessee has brought to the notice of the AO that even though the assessee firm was engaged in the business of ground handling, maintaining, cleaning of aircrafts etc. from 01.06.2008 onwards, the ground handling business was taken over by the M/s Star Consortium Aviation Services Pvt. Ltd. and therefore according to assessee firm, the income/payment in respect of services rendered in respect of ground handling business for M/s Kingfisher Airlines might have been wrongly shown by Kingfisher Airlines to have been wrongly credited in Form 26AS of the assessee firm instead of the M/s Star Consortium Aviation Services Pvt. Ltd. In order to support its contention/explanation the assessee firm placed before the AO the communication between it (the assessee firm and M/s Kingfisher Airlines). From a perusal of e-mail copy between the assessee firm, M/s Star consortium Aviation Services Pvt. Ltd. and M/s Kingfisher Airlines shows that there were numerous communications between these three parties for AY 2008-09 going up to October/November, 2009. The Ld. CIT(A) notes that from the contents of these communication between the parties, it apparent that there was a goof up in the office of M/s Kingfisher Airlines in respect of filling up of TDS Form 26AS, PAN relevant for M/s Star Consortium Aviation Services Pvt. Ltd. and non-issue of TDS certificates etc to the parties concerned including that of the assessee firm. The Ld. CIT(A) also noted that the assessee had brought this fact to the notice of AO that goof-up took place in the office of TDS deductor (M/s Kingfisher Airlines Ltd.) while filling the Form 26AS as regards the assessee's PAN having been entered wrongly posted after 01.06.2008 during which period the services were not claimed to have been rendered by the assessee firm and the relevant bills are not claimed to have been raised by the assessee firm on the Airlines. Having brought these information to the notice of the AO and since the assessee was able to prove that the business of ground handling services was transferred to M/s Star consortium Aviation Services Pvt. Ltd. from 01.06.2008 onwards; and there was a goof up in the office of TDS deductor (Kingfisher Airlines) while they were filling up 26AS by wrongly entering the PAN, according to Ld. CIT(A) the AO was duty bound to verify the veracity of the claim since the assessee has placed enough material before the AO to support its contention/explanation in respect of mismatch of Rs. 2.14 crores which assessee firm denied to have been received by it. Taking note of all these facts, the Ld. CIT(A) had even issued a letter to Kingfisher Airlines on 04.09.2019 seeking clarification about the Form 26AS/TDS credit against the assessee's PAN. However the Ld. CIT(A) notes that the said letter was returned back with postal remark "Left". So the Ld. CIT(A) notes that it is difficult to conclude the information in respect of TDS amount

shown in Form 26AS from the TDS deductor as conclusive against the assessee. Therefore, the Ld. CIT(A) observed as under:

"4.16. Since the income has been added, the AO is legally required to prove that the said income accrued to the appellant or was received by it. The burden is on the AO to prove the alleged fact. On the contrary in the assessment proceedings, the AO demanded the appellant to prove that the amount appearing in Form 26AS did not belong to the appellant. In any case, it is difficult to prove the negative for the appellant, who seems to have submitted good amount of papers to the AO to support its case on the issue concerned. For the purposes of the appellate order, I hold that the AO has proceeded without any material to hold that the appellant had earned Rs. 2,14,35,593/-. I further hold that Form 26AS alone cannot lead to addition of income if claims are made of wrong data entry/information and lack of corresponding services by the deductee to the deductor."

With the aforesaid observation the Ld. CIT(A) was pleased to delete the addition of Rs. 2.14 crores. Thereafter the Ld. CIT(A) estimated the income of the assessee, which according to him should be net profit (NP) of 11.17% of Rs. 2,14,35,593/-(difference figure); and against this action of Ld. CIT(A), the assessee is before us contending that even if addition is made, the NP should be only 1.22% since the assessee has shown NP on its turnover of Rs. 3,31,50,625/- which has been accepted by the AO as well as Ld. CIT(A). We note that only because there is a mismatch between TDS certificate (26AS) and turnover shown by the assessee in its P& L account cannot be the sole basis on which the entire addition of the difference could have been brought to tax. Therefore, on the facts and circumstances discussed above we find the view of the Ld. CIT(A) to be a plausible view and accordingly his action of deleting Rs. 2,14,35,593/- is confirmed and therefore, the appeal of the revenue stands dismissed.

7. Coming to the partial confirmation made by the Ld. CIT(A) by resorting to estimation of NP at 11.17% of the difference in amount/turnover at Rs. 2,14,35,593/-we note that while doing so i.e. while exercising his co-terminus power in the appellate proceedings he could have done so as per law meaning when he proposed to estimate the income of the assessee, the Ld. CIT(A) should have first of all rejected the audited books of account produced by the assessee in accordance to Section 145 of the Income Tax Act, 1961 (hereinafter referred to as the Act) which the Ld. CIT(A) has not admittedly done. So the estimation of Ld. CIT(A) fails being bad in law. Therefore we direct the deletion of estimated amount.

8. However before parting in interest of the Revenue, it is not that assessee's case is that it has not claimed the credit for Rs. 2.14 crores, if that is so, then the presumption is that the corresponding receipt of Rs. 2.14 crores is not belonging to assessee. If that fact is correct, then no addition is warranted. However, on examination if it is found that assessee has claimed credit for TDS of Rs. 2.14 crores then the AO is directed to assess the income element embedded in these receipt which in the facts of the present case is N.P. of 1.22%.

9. In the result, the appeal of the revenue is dismissed and cross objection of the assessee is allowed for statistical purposes.