

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1750/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2011-12)

Bona Sera Hospitality Pvt. Ltd. M/s. Kalyaniwalla & Mistry LLP, Esplanade House, 2 nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400001.	बनाम / Vs.	DCIT, Range-7(2) 6 th Floor, Aayakar Bhawan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKCS7518L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri M. M. Golvala & Shri Hormuzd Jamshedji
Revenue by:	Shri Manoj Kumar Sinha (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 10/08/2023

घोषणा की तारीख /Date of Pronouncement: 25/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 24.03.2023 for AY. 2011-12.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) partly allowing the appeal of assessee by directing AO to verify addition of Rs.1,91,956/- & Rs.4,74,558/-. And for not deleting Rs.3,67,773/- (*amount assessee could has not reconcile*).

3. The facts of the appeal are that the assessee company filed its return of income for AY. 2011-12 on 27.09.2011 declaring loss of Rs.2,83,48,393/-. The assessee company is in the business of providing services of developing, installing and maintenance of software to the hospitality, food service and various other general industry segments and also carry out trading in hardware and software. It had more than 300 clients (*mainly restaurant & hotel*) and according to assessee, in



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the course of business by its clients more than 2000 invoices were raised during the year under consideration. And during the assessment proceedings, the AO based on the AIR information (*mismatch in 26AS*) directed assessee to *reconcile* the income appearing in the books of the assessee. Pursuant to the direction of AO the assessee reconciled the same, but since there was still a mismatch of Rs.8,42,331/- as well as Rs.1,91,956/- the AO made addition of Rs.10,34,287/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to direct the AO to verify the fact that M/s. United Crane Components Pvt. Ltd. did not had business with assessee and it admitted the error of crediting TDS in assessee's account and promised to correct the error by revising the TDS return. Therefore, Ld. CIT(A) directed AO to verify the aforesaid fact and delete Rs.1,91,956/-; and the Ld. CIT(A) after finding that assessee was able to reconcile Rs.4,74,558/- directed AO to verify and give relief accordingly. Thus out of Rs.10,34,287/- made by AO, Ld. CIT(A) directed AO to delete (Rs.1,91,956/- + Rs.4,74,558/-) ie, total Rs.6,66,514/-. Thus, assessee is aggrieved by confirmation of balance addition of Rs.3,67,773/-.

4. Assailing the action of Ld. CIT(A), according to the Ld. AR of the assessee, there was approximately 1200 odd items reported under AIR and it was a herculean task to reconcile each and every item, still assessee successfully reconciled 1100 items and due to its inability to reconcile the balance, and due to un-intentional mistake, the tax should not be added in the hands of the assessee. Drawing our attention of the page no. 2 of the PB, the assessee pointed out that the assessee had



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shown loss of Rs.2.83 crores and drew our attention to page no.10 of PB wherein the assessee has shown revenue from operation to the tune of Rs.10.89 crores. Thereafter, he drew our attention to page no. 19 of PB which is the audited accounts of the assessee (Schedule-17) to show that the assessee was a developer of software in respect of hospitality and had been installing and maintaining the software supplied by it to the restaurants and hotel industry; and the main income of the assessee was from maintenance service rendered by it to more than 2000 clients. The Ld. AR drawing our attention to page no. 28 to 60 wherein the assessee has kept copy of Form no. 26AS from where we note that there have been 345 entries and details given of the TDS are given therein. Thereafter, the Ld. AR, drew our attention to page no. 61 onwards which is the copy of return of income and took our attention to relevant portion of page no. 68 to 71 PB wherein the TDS claim made in the return of income has been filed. Drawing our attention to page no. 72 i.e. the 1327 line items, and to page no. 82 PB wherein the relevant details as well as action of the AO is seen as under: -

Particulars	Amount (Rs.)
Total Revenue as per Profit and Loss Account	10,89,33,540
Revenue as per Form 26AS (A)	5,88,84,001
Reconciliation accepted by Assessing Officer	5,80,41,670
Addition made by Assessing Officer in respect of unreconciled items	8,42,331
Addition made by Assessing Officer in respect of United Crane Components Pvt. Ltd. (party with whom no dealings whatsoever)	1,91,956
Total addition made by Assessing Officer (B)	10,34,287
% of unreconciled items to total revenue as per Form 26AS (B)/(A)	1.7565%

Relief granted by Commissioner (Appeals)	1,91,956
(after due verification)	4,74,558
Addition confirmed in respect of unreconciled items (C)	<u>3,67,773</u>
% of unreconciled items to total revenue as per Form 26AS (C)/(A)	<u>0.6246%</u>
% of unreconciled items to total revenue.	<u>0.3376%</u>



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5. We note that the assessee had shown revenue of Rs.10.89 crores and also brought to the notice of the Ld. CIT(A) that an amount of Rs.1,91,956/- was erroneously shown by M/s. United Crane Components Pvt. Ltd. (supra) and Rs.8,42,331/- which could not be reconciled before the AO due to paucity of time; and was able to bring the notice of the Ld. CIT(A) that this amount (Rs.8,42,331/-) was from four (4) concerns i.e. M/s. Sai Service Station Ltd. of Rs.2,28,600/-; SKF India Ltd. of Rs.3,63,900/-; Lemill Private Ltd. of Rs.49,314/- and Landmarc Leisure Corporation Ltd. of Rs.2,01,774/- total of Rs.8,42,331/-. And the assessee was able to reconcile out of it an amount of Rs.4,74,558/- and the Ld. CIT(A) has directed the AO to verify and grant relief accordingly. Thus, it is noticed that the assessee was not able to reconcile Rs.3,67,773/- before the Ld. CIT(A). However, it is noted that these four (4) companies had transactions with the assessee and assessee had provided *inter-alia* different services/products (i) software services, (ii) software license (iii) SPA Management System etc to these parties which details were furnished before the Ld. CIT(A); and assessee contended that the assessee was following mercantile system of accounting; and that when the assessee issued the invoices, it booked the sales/services in its books, but at times, the customers makes the payment in next year or current year based on proforma invoices. But the fact remains that payments made by these customers were duly accounted for and tax remitted in current/subsequent years and that the customers had admittedly paid the TDS in the current year and the corresponding revenue shown by assessee is much more. So according to assessee, there is no escapement of income. According to assessee, it is evident from the



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AIR information itself that revenue as per the 26AS was only to the tune of Rs.5,88,84,001/- and the assessee has been unable to reconcile only Rs.3,67,773/- and has shown revenue to the tune of Rs.10,89,33,540/-. In this regard, it is found that the revenue shown by assessee in its P & L account far exceeds the amount shown in the AIR information. It is further noted that the assessee has reconciled major portion of the receipts. It has not been denied by the Revenue Authorities that full and complete details of the parties are not mentioned in the AIR information. The addition in this case has been made by the lower authorities solely on the basis of AIR information. In our view, the additions, made solely on the basis of AIR information especially in the absence of full details of parties and when the receipts declared by the assessee far exceeds the amount mentioned in the AIR information, is not sustainable in the eyes of law. [Refer decision of the Bangalore Bench of the Tribunal in the case of “DCIT Vs. Shree G. Selva Kumar” in ITA. No.868/Bang/2009 decision on 22.10.2010 and decision in the case of “Mrs Arati Raman Vs. DCIT” in ITA. No.245/Bang/2012 decided on 05.10.2012] In these cases, the Tribunal has held that the assessment order based only on the strength of the AIR information would not be sustainable in case, the assessee disputes the receipt of income from a particular source. In such an event the AO need to prove that the assessee has received income because the assessee cannot be expected to prove the negative. Before us, the assessee relied upon the decision of this Tribunal in the case of Shri S. Ganesh Vs. ACIT in ITA. No.527/M/2010 decided on 08.12.2010 wherein the Tribunal has held that in the absence of any material brought out by the revenue



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authorities that the assessee has received amount more than the professional fees which has been declared by him in the P & L account and when the professional income declared by the assessee far exceeds the professional fees shown in the AIR information, then additions solely based on the AIR information are not sustainable which view has been upheld by Hon'ble High Court vide order dated 31.08.2021. It is noted that in the present case, the percentage reconciled items to the revenue shown by the assessee is only 0.3376%, which is negligible considering the revenue shown by assessee to the tune of Rs.10.89 crores. Therefore, considering the peculiar facts of the case, and the precedent cited (supra), we direct deletion of addition of Rs.3,67,773/-.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 25/10/2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/10/2023.
Vijay Pal Singh, (Sr. PS)

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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