

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.7453/Del./2017
Assessment Year: 2014-15

M/s. Building Design Partnership Ltd., 201, South Ex Plaza, 1/389, Masjid Moth, South Ext. Part-II, New Delhi	Vs.	DCIT, CPC, Bengaluru
PAN :AADCB5345H		
(Appellant)		(Respondent)

Appellant by	Sh. Ved Jain, Adv. & Sh. Ashish Goyal, CA
Respondent by	Sh. Satpal Gulati, CIT(DR)

Date of hearing	23.03.2021
Date of pronouncement	27.04.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 13/09/2017 passed by the Learned CIT (Appeals)-42, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15 in relation to order dated 20/10/2016 under section 154 of the Income-tax

Act, 1961 (in short 'the Act') passed by the Deputy Commissioner of Income Tax, Central Processing Centre (CPC), Bangalore. The grounds raised by the assessee are reproduced as under:

1. *That the Ld. AO erred in taxing the same income of assessee twice, once at special rate of 15% under Double Taxation Treaty between UK and India as per Article 13 of the said treaty and again as normal business income at the rate of 40% being the rate applicable to foreign companies.*
2. *That Ld. AO erred in rejecting the request of the assessee u/s 154 of the Income Tax Act to rectify the said order.*
3. *That it is gross injustice to the assessee who is being forced to pay tax twice on the same income resulting in aggregate tax rate of 55% on the income.*

2. Both parties have been heard through Video Conferencing facility. The Learned Counsel of the assessee has also filed a paper-book containing pages 1 to 95.

3. Briefly stated facts of the case as culled out from the order of the lower authorities and the paper-book of the assessee are as under:

- (i) that the assessee is a foreign company and does not have any Permanent Establishment (PE) in India. During the year under consideration, the assessee earned income of ₹ 26,43,090/- which has been claimed by the assessee as in the nature of "Fee for Technical Services"(FTS) as specified under Article

13 of India UK Double Tax Avoidance Agreement (DTAA) as well as under the Income Tax Act.

- (ii) the assessee filed its return of income for the year under consideration electronically on 30/09/2014. In the return of income, the assessee offered the said income under the head “profit and gains of business and profession”. The same income was also offered for tax at a special rate under schedule “SI” of the return of income (paper-book at page 35)
- (iii) On page 40 of the paper-book, the assessee has filed activity chart in relation to the return of income filed. According to this chart, the assessee filed return of income on 30/09/2014 and thereafter, the assessee was communicated on 30/11/2014 that the ITR filed by the assessee was defective/incomplete. Thereafter, the assessee filed another return of income on 30/03/2015, wherein also the assessee while computing total income, shown the income of ₹ 26,43,090/- under the head profit in gains of the business (page 55 of the paper-book) but under the schedule “SI” shown the nil income. The assessee was again communicated on 23/06/2015 regarding defects in the return of income filed as evident from the activity reported on page 40 of the paper-book.
- (iv) In view of no response from the assessee, the return which was considered as defective was taken up for processing on 6/03/2016 (activity reported on page

40 of the paper-book). In view of same income offered by the assessee at two places in the return of income, the Assessing Officer at CPC processed the return of income vide intimation under section 143(1) of the Act dated 10/03/2016 and computed tax liability on the income declared under the head profit and gains of business and profession and also computed tax at special rate of 15%. Total tax liability of ₹14,15,190/-was raised on the assessee.

- (v) The assessee sought rectification of the order under section 143(1) on 27/09/2016 before the Central Processing Centre. The Deputy Commissioner of Income-tax, CPC, rejected the rectification and after taking into consideration the prepaid taxes, raised the outstanding tax liability of ₹ 13,99,730/-.
- (vi) Aggrieved, The assessee filed appeal before the Ld. CIT(A), who dismissed the appeal of the assessee on the ground that there was no error in the order under section 143(1) of the Act and whatever mistake was in the return of income filed by the assessee, which could be corrected by way of filing a revised return.
- (vii) As the period for filing revised return was already expired, the assessee preferred appeal before the Income-tax Appellate Tribunal (in short 'the Tribunal'), raising the grounds as reproduced above.

4. Before us, the learned Counsel of the assessee submitted that the assessee is governed by the provisions of section 115A(1)(b) read with section 44AD and is liable to pay tax at the rate of 25% plus surcharge plus cess, however, under Article 13 of India UK Tax Treaty, the rate of tax on FTS is provided at 15%. The rate specified under the Article 13 of India UK treaty, being more beneficial to the assessee, the income is liable to be tax at the rate of the 15% and accordingly, the assessee while filing return of income deposited tax of ₹ 4,08,358/- along with the interest. The assessee filed a copy of computation of total income and tax thereon on page 2 of the paper-book. The learned Counsel submitted that income of the assessee has been taxed twice. He further submitted that it is the duty of the income tax authorities to assess the correct income. He referred to CBDT Circular No.14 (XL-35) dated 11th April 1955, wherein the Assessing Officers were directed not to take advantage of assessee's ignorance or mistake. The learned Counsel also submitted that time limit for filing revised return had already expired and therefore the assessee is unable to comply with the direction of the Learned CIT(A) for filing the revised return.

5. The Learned DR, on the other hand, submitted that the assessee is solely responsible for the mistake in the return of income filed and the Assessing Officer has processed the return as per the information provided by the assessee. According to him, there is no mistake in the intimation order under section 143(1) of the Act.

6. We have heard rival submission of the parties and perused the relevant material on record. On perusal of the original as well

as return of income filed in compliance to defective memo under section 139(9), we find that the assessee was having very casual approach towards filing returns of income. The return of income filed by the assessee on 30/09/2014 contains parts A and B. After these two parts, there is a verification by the assessee and thereafter different schedules are available in the return of income. On perusal of Part A-BS (Balance-sheet as on 31st March 2014) of the return of income, we find that assessee has reported nil figures. Similarly, in part A-P & L (profit and loss account for financial year 2013-14) also the assessee has reported nil figure. In part B-TI (computation of total income) also the assessee has reported nil income. In clause 14 of Part B -TI, the assessee has reported income chargeable to tax at special rates. In schedule 'SI' also the assessee declared income of Rs.26,43,090/- and computed tax at the rate of 1% under DTAA amounting to ₹ 3,96,464/-. In another return filed in compliance to notice u/s 139(a), which has been verified on 30/03/2015, we find that no details in respect of assets and liabilities and profit and loss accounts are filed except gross and net receipts of ₹ 26,43,090/-. In the part A-TI (computation of income), the assessee declared [in the row 2(i)] profit and gains from business other than speculative business at ₹ 26,43,090/-. The assessee also declared income chargeable to special rates as per schedule 'SI' at ₹ 26,43,090/-. The Learned Counsel has claimed before us that income of the assessee was liable under section 44D has been but in the return of income filed on 30/03/2015 in the row 34(vi) (on page 58 of the paper-book) the income again section 44D reported

as nil. Thus, definitely, return of income has been filed in negligent and casual manner with errors and omissions.

6.1 Further, on perusal of the order under section 143(1) dated 10/03/2016 , available on page 78 to 83 of the paper-book, we find that in row having serial No. 10, income chargeable to tax at a special rate has been reported NIL in both columns, i.e., as provided by the taxpayer as well as computed under section 143(1) of the Act. Despite nil income reported in both columns, against Serial No. 10, the Assessing Officer in serial No. 22 has computed tax at special rate of ₹ 3,96,464/- in both the columns for taxpayer as well as under section 143(1) of the Act. Thus, there is an apparent mistake of computing tax at a special rate without any income reported for tax at a special rate.

6.2 In view of this apparent mistake in the order under section 143(1), the finding of the Ld. CIT(A) that there is no mistake in the order of the Assessing Officer, is not correct. It is evident that the assessee is at fault for not reporting the income in proper columns, but the Assessing Officer, has also committed apparent mistakes of computing tax without considering the income for special rate. In view of the above observation and in the interest of the substantial justice, we set aside the order of the Learned CIT(A) on the issue in dispute and restore the matter back to the file of the Assessing Officer for deciding the rectification application of the assessee on merit keeping in view the cardinal principle that assessee cannot be taxed twice for the same income, one under the head “profit and gain of business and profession” and other under “special rate specified in DTAA”. It is needless to mention that the assessee shall be provided adequate

opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27th April, 2021

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 27th April, 2021.

RK/-(DTPDS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi