

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1688/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2014-15)

The Deputy Commissioner of Income Tax, Corporate Circle-5(2) Chennai-600 034.	Vs	M/s. Precision Informatic (Madras) Pvt.Ltd. Old No.150, New No.22, Habubullah Road, T.Nagar Chennai-600 017.
		PAN: AAACP 6434G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr.V.Vivekanandan, CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. B.Ramakrishnan, C.A.

सुनवाईकीतारीख/Date of hearing	:	06.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	28.04.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order passed by the Commissioner of Income Tax (Appeals)-3, Chennai dated 27.02.2018 and pertains to assessment year 2014-15.

2. Brief facts of the case are that the assessee company is engaged in the business of trading and providing services for computer hardware products. The revenue from operations includes sales of products and services of products. The assessee had filed its return of income for the assessment year 2014-15 on 28.11.2014 declaring Nil total income. The

assessment has been completed u/s.143(3) of the Income Tax Act, 1961, dated 28.12.2016 and determined total income at Rs.9,34,69,020/- by making various additions, including additions towards understatement of stock amounting to Rs.7,56,20,161/- on the ground that the assessee has understated its turnover in books of account. Aggrieved, the assessee filed an appeal before the learned CIT(A), and challenged additions made by the Assessing Officer towards understatement of gross profit on turnover. The learned CIT(A), for the reasons stated in his appellate order dated 27.02.2018, has deleted additions made by the Assessing Officer. The revenue has challenged order passed by the learned CIT(A) before the Tribunal and challenged deletion of understatement of turnover to the tune of Rs. 7,56,20,161/- vide ground Nos.2.1 to 2.4. The Tribunal had disposed off appeal filed by the Revenue, however, did not adjudicate ground nos. 2.1 to 2.4 filed by the revenue challenging findings of the learned CIT(A). The Tribunal vide its order dated 14.01.2020 in M.P.No.213/Chny/2019 recalled the order, *qua* ground Nos.2.1 to 2.4 and thus, present appeal is listed for hearing to decide grounds of appeal raised by the Revenue vide ground no.2.1 to

2.4. Therefore, it is relevant to reproduce ground nos.2.1 to 2.4 raised by the revenue as under:-

“2.1 The learned A.R. CIT(A) erred in directing the AO to delete the addition made towards understatement of turnover to the tune of Rs.7,56,20,161/-.

2.2 The Id CIT(A) ought to have appreciated that the assessee failed to produce proper evidence / documents in support of its claim that the difference between the sales figure as per the Financials vis-a-vis Returns filed under Service Tax / VAT were due to the fact that in the case of composite nature of services involving material and labour, the assessee was unable to identify them upfront and both these services were taken into consideration in Service Tax Return as well as VAT, which resulted in overlapping of receipts under both categories.

2.3 The Id CIT(A) overlooked the fact that the assessee put forward contradictory statements during the scrutiny proceedings and while submitting rejoinder to the remand proceedings inasmuch as the claim of the assessee during the scrutiny proceeding

was that for comprehensive AMC charges it showed 70% & 30% respectively in Service Tax and VAT regime, whereas in the rejoinder it was submitted that they have shown 70% of the comprehensive AMC in both Service Tax Return / VAT.

2.4 The Id CIT(A) failed to appreciate that in proving a claim the primary onus is on the assessee which it failed to discharge and the claim of overlapping of revenue under Service Tax / VAT have been accepted by the Id CIT(A) merely based on a reconciliation statement filed by the assessee, without any evidentiary value.”

3. The learned DR submitted that the learned CIT(A) erred in directing the Assessing Officer to delete additions made towards understatement of turnover to the tune of Rs.7,56,20,161/- without appreciating fact that the assessee failed to produce proper evidence/documents in support of its claim that difference between sales figure as per financials, vis-à-vis returns filed under service tax / VAT were due to the fact that in case of composite nature of services involving material and labour, the assessee was unable to identify them

upfront and both services were taken into consideration in service tax returns as well as VAT, which resulted in overlapping of receipts under both categories. The learned DR further submitted that the learned CIT(A) overlooked the fact that the assessee put forward contradictory statements during the assessment proceedings and while submitting rejoinder to the remand proceedings inasmuch as claim of the assessee during the scrutiny proceedings was that for comprehensive AMC charges, it showed 70% and 30% respectively in service tax and VAT, whereas in rejoinder, it was submitted that they have shown as 70% of comprehensive AMC in both service tax return and VAT return.

4. The learned A.R for the assessee, on the other hand, referring to paper book filed by the assessee submitted that the assessee has filed reconciliation explaining overlapping of turnover declared in service tax returns and VAT returns and also furnished necessary details. The Assessing Officer ignoring all evidences filed by the assessee has summed up turnover declared under VAT return and service tax return and then compared with sales declared in the financial statement to arrive at difference. During appellate proceedings, the assessee

has filed complete details and also reconciliation between turnover declared in sales tax and service tax returns. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and their order should be upheld.

5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee company is engaged in the business of sales and service of computer hardware products. The assessee also takes AMC contract for computer hardware products. The assessee raises two kinds of invoices to its customers. In respect of comprehensive contracts, which involves materials and labour, it charges VAT and service tax at the rate prescribed by relevant Acts. In respect of non-comprehensive contract, same is categorized either under VAT or service tax return. In respect of comprehensive AMC, as per Service Tax (Determination of Value) Rules, 2006, the assessee has adopted 70% basic sale value for service tax purpose and similarly, as per VAT / GST Rules, the assessee has adopted 70% of basic sale value for the purpose of levy of

VAT. If you consider VAT return and service tax returns filed by the assessee, then turnover of the assessee is in excess of amount of turnover declared in the financial statement filed for relevant assessment year. The Assessing Officer has adopted turnover declared in VAT return and service tax return and then compared with turnover reported in financial statements. According to the Assessing Officer, total turnover as per service tax return and VAT return works out to Rs.1,45,56,09,534/-, whereas the assessee company has reported turnover of Rs.1,20,21,90,762/-. Therefore, he had arrived at difference of Rs.25,34,18,772/- and on that difference turnover, estimated gross profit @ 29.84% and made addition at Rs.7,56,20,161/-.

6. We have given our thoughtful consideration to the reasons given by the Assessing Officer in light of various arguments advanced by the learned AR for the assessee along with service tax return and VAT return filed by the assessee for relevant period and we ourselves do not subscribe to reasons given by the Assessing Officer for simple reason that there is overlapping of turnover reported in service tax return and VAT return due to comprehensive nature of AMC contracts

undertaken by the assessee. As we have already stated in earlier part of this order, the assessee is in the business of sales and service of computer hardware products and the assessee has also taken AMC contracts. The comprehensive AMC contracts are liable for VAT as well as service tax at respective rates as per rules prescribed for levy of tax on turnover. Accordingly, the assessee has charged VAT and service tax on 70% basic value, which resulted in overlapping of turnover in both VAT and service tax returns. The Assessing Officer on the basis of returns filed by the assessee under VAT and service tax opined that the assessee has understated turnover without appreciating fact that there is overlapping of turnover in both returns. The learned CIT(A), after considering relevant facts and also taking note of reconciliation filed by the assessee explaining turnover declared in service tax return and VAT return has rightly deleted additions made by the Assessing Officer towards estimation of gross profit on difference in turnover. We further noted that the assessee has filed reconciliation statement explaining turnover reported in service tax return and VAT return as well as financial statement filed for relevant assessment year. From the above, what we could

notice is that there is no difference between financial statement, when compared to turnover reported in service tax return and VAT return filed for relevant assessment years. Therefore, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to delete additions made by the Assessing Officer towards estimation of gross profit on turnover. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

7. In the result, appeal filed by the Revenue is dismissed in terms of our observations given hereinabove.

Order pronounced in the open court on 28th April, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 28th April, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.