

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.52/Bang/2023
Assessment year : 2011-12

ACME Telecom and Network Solutions Pvt. Ltd., # 57A, 4 th A Cross, Sri Venkateshwara Layout, Outer Ring Road, Mahadevapura, Bangalore – 560 048. PAN : AAECA 8264D	Vs.	The Income Tax Officer, Ward 11(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Deepesh Wagle, CA
Respondent by	:	Shri Subramanian, S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.11.2023
Date of Pronouncement	:	09.11.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2022-23/1047836252(1) dated 06.12.2022 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2011-12 on the following grounds:-

“1. The order of assessment passed by the learned Assessing Officer in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned assessing officer has failed to take into consideration the evidence furnished by the Assessee such as mail correspondence from M/s. Nokia Siemens Network Private Limited in this regards,

3. The learned Commissioner of Income Tax (Appeals) has failed to take into consideration the Certificate given by M/s. Nokia Siemens Network Private Limited to your Appellant confirming the TDS deductions on accruals and future adjustments against the actual accruals.

4. The learned Commissioner has failed to appreciate the fact that the assessee, being a Company is also required to follow the applicable Accounting Standards i.e AS-9 (Revenue Recognition), wherein the assessee is required to recognize the revenue and raise the bills when the services are completed or substantially completed.

5. The learned Commissioner has failed to appreciate the fact that the Purchase Order do get amended in an ordinary course of business for which the assessee is not required to raise the bill as no service were provided.

6. The learned Commissioner has failed to appreciate the fact that the assessee being a small service provider, providing services to a multi-national company like M/s. Nokia had no negotiation power nor a capacity to ask for 26AS entry wise reconciliation of their books to his. The assessee was forced to claim the entire TDS credit available in Form 26AS as if the same was not claimed, the same would have been a loss for him.

7. The learned Commissioner has failed to consider the genuine plea of your appellant that the reconciliation produced clearly demonstrated there was no undisclosed income. Whatever the assessee received (Evident in Bank Statements), he has offered it for taxation (Evident from Sale Bills & Certified Audited Financial).

8. The learned Commissioner of Income Tax (Appeals) is not justified in denying the fact that the assessee has not claimed any TDS credit from Nokia in the next AY i.e., 2012-2013.

9. The learned Commissioner of Income Tax (Appeals) is not justified in denying the fact that the assessee has accounted all the receivables from M/s. Nokia and there is no payable or receivable from M/s Nokia as on date.

10. The learned Commissioner of Income Tax (Appeals) is not justified in overlooking the reconciliation and denying the fact that the assessee has offered the entire income from M/s Nokia for taxation and has claimed TDS.

11. The learned Commissioner of Income Tax (Appeals) is not justified in understanding that an income can be treated as undisclosed income only if there are no valid explanation available with the assessee with supporting.

12. The learned Commissioner of Income Tax (Appeals) has not considered the valid explanation and supporting evidence given by your appellant in this regards.

13. That on the facts and Circumstances of the case, the learned Assessing Officer was not justified in adding back the same credit as taxable Income of the assessee twice.

14. That on the facts and Circumstances of the case, the Learned Commissioner of Income Tax (Appeals) was not justified in upholding the assessment done by the Assessing Officer.

It is respectfully submitted that we may be permitted to add, delete and / or put forward any other grounds and fact of appeal and other related points at the time of hearing.”

2. The brief facts are that the assessee filed its return of income on 19.9.2011 declaring income of Rs.19,52,300. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee submitted details as called for. The AO noted that there is a difference of the turnover reported in Form 26AS and the return filed by the assessee. The gross receipts in Form 26AS is Rs.2,29,03,289 whereas it is Rs.1,89,02,673 as per Profit & Loss account, with a

difference of Rs.40,616. The assessee submitted that the difference is due to the fact that the assessee the assessee accounts for net figure (total minus service tax) of receipts wherever TDS is deducted on the total bill value inclusive of service tax. The assessee further submitted reconciliation statement as follows:-

		Gross amount
As per 26AS		2,29,03,289
As per books of accounts		
Sales receipts	1,84,60,067	
Service tax	19,02,625	2,03,63,233
Difference		25,40,056

3. As per the above table, the AO noted that there is difference of Rs.25,40,056 being undisclosed receipts and the assessee submitted that the difference is due to the receipts from M/s. Nokia Siemens Network Pvt. Ltd., who has shown the gross payments of Rs.1,04,54,448 to the assessee during FY 2010-11, whereas the assessee accounted in its books only Rs.66,84,527, hence there is a difference of Rs.37,69,921 being undisclosed receipts. However, the assessee claimed entire TDS reported in Form 26AS. The difference amount is not sale receipts, received or receivable by the assessee. The AO further noted that without offering the corresponding income, the assessee has claimed TDS. In this regard, the assessee submitted that the amount has been deducted by the deductor in the bills payable for the succeeding/prior year. The AO after examining the details added a sum of Rs.37,69,921 to the income of the assessee.

4. On appeal before the CIT(Appeals), the assessee relied on various judgments and the CIT(Appeals) upheld the action of the AO. Aggrieved, the assessee is in appeal before the Tribunal.

5. The Id. AR reiterated the submissions made before the lower authorities and submitted that assessee has shown the works done and corresponding expenditure in the books of account and the amount which is not related to the current year has not been considered as income/expenditures of the assessee and it has been offered in the relevant assessment year. However, TDS has been claimed as reported in Form 26AS because the assessee had no option to claim the TDS for the prior year or succeeding year. He further submitted that the assessee was doing works since FY 2004-05 to 2014-15 and the details are placed at page 50 of PB and assessee has not received any extra payments or receipts from the contractee. The entire revenue receipts against the works done have been offered for taxation in the respective year. During the assessment proceedings, the assessee issued many letters to the contractee, but he did not provide any details. The Id AR further submitted that similar issue has been decided by the coordinate Bench of Tribunal in the case of D.M. Estate P. Ltd. 113 taxmann.com 386 (Bang. Trib) at para 8 & 9 in favour of the asse as under:-

“8. I have heard the rival submissions. It is clear from the orders of the Revenue authorities that the impugned addition has been made purely on the basis of difference between income as reflected in Form 26AS and income as reported in books of accounts. As far as the Assessee is concerned, the receipts of rents as recorded in the books of accounts is in consonance with the agreement between the assessee and the lessee. No defect

whatsoever has been pointed out by the Revenue authorities in the books of accounts of the assessee. In such circumstances, the impugned addition cannot be sustained as held by the ITAT, Mumbai Bench in the case of TUV India (P.) Ltd. (supra). The Tribunal on an identical addition made to the total income on the basis of mismatch of receipts as per Form 26AS and the receipts shown by the Assessee firstly held that the assessee has done all what best it could do to discharge its onus/burden which lay under the provisions of the 1961 Act by submitting reconciliation statements as well explaining the reasons for differential between the income as is reported in Form No. 26AS information as per the data base maintained by the Income-tax Department and the income as is reflected in its books of account. The assessee has discharged its primary onus/burden and the assessee could not be asked to do impossible. Secondly the Tribunal held that there could be differences in the accounting policy followed by the taxpayer and its clients who have deducted Income-tax at source on behalf of the taxpayer as well wrong mention/punching of the permanent account number of the tax payers by the clients while filing the TDS returns with the Department. One of the reasons for differential could be that the clients have deducted TDS on the gross amount inclusive of service tax while the income is reflected by the taxpayers exclusive of service tax. Thirdly, the tribunal held that the assessee has no control over the data base of the Income-tax Department as is reflected in Form No. 26AS and at best the assessee could do is to offer bona fide explanations for these differential which the assessee did in this case during the appellate/remand proceedings. Fourthly, it held that the Income-tax Department has all the information and data base in its possession and control. The learned Commissioner of Income-tax (Appeals)/Assessing Officer ought to have conducted necessary enquiries to unravel the truth but asking the assessee to do impossible is not warranted. The tribunal finally concluded that no additions to the income are warranted in the hands of the assessee owing to differential in income based on Form No. 26AS and the income as is reflected in the books of account maintained by the assessee.

9. I am of the view that the facts of the case of the Assessee are identical to the case decided by the Mumbai ITAT referred to above. I am therefore of the view in the facts and circumstances

of the case, the impugned addition cannot be sustained and the same is directed to be deleted. The appeal of the assessee is accordingly allowed.”

6. The Id. DR relied on the orders of lower authorities and he submitted that the assessee has not followed the provisions of section 199 of the Act r.w. Rule 37BA(3). The assessee is a company following mercantile system of accounting and has to record income on accrual basis during the year. However, the assessee has violated the provisions in not following mercantile system of accounting because the TDS not related to the current year has also been claimed by the assessee as income of the year. He further submitted that the assessee was unable to produce reconciliation statement of the contractee, who also did not respond to the letters issued by the department. Therefore, he submitted that the orders of lower authorities should be upheld.

7. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, it is evident that the total revenue offered by the assessee is Rs.2,03,63,233 including service tax and total receipts as per Form 26AS is Rs.2,29,03,289 with a difference of Rs.25,40,056. The deductor, M/s. Nokia Siemens Network Pvt. Ltd. has recorded the gross payment of 1,04,54,448 whereas the assessee has recognized sales/receipts of Rs.66,84,527 and assessee claimed TDS.credit on entire TDS of Rs.10,21,095. On perusal of Form 26AS, we note that the deductor has deducted TDS either u/s. 194J or 194C of the Act. The books of account have been audited by the Auditor and the AO has accepted the books of accounts. During

the course of hearing the Id. AR referred to page 50 of PB which is details from FY 2004-05 to FY 2014-15. The assessee has claimed the entire TDS and the AO noted that there is difference in the income in the financial statements and Form 26AS. For this difference, the assessee has not produced reconciliation statement. The assessee has furnished details of income on which TDS has been deducted, but has now shown the income offered to tax in the prior/subsequent year. Therefore, considering the entire facts and the documents produced by the assessee, we deem it fit to send back the issue to the Assessing Officer to reconcile the accrual of income during the year as claimed by the assessee and decide the issue afresh as per law, after reasonable opportunity of being heard to the assessee. The assessee is directed to furnish the reconciliation statement and other necessary documents in support of its case before the AO and not seek unnecessary adjournment for early disposal of the case. Accordingly, the appeal is restored to the file of Assessing Officer.

8. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 09th day of November, 2023.

Sd/-

(GEORGE GEORGE K.)
VICE PRESIDENT

Bangalore,

Dated, the 09th November, 2023.

/Desai S Murthy /

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.