

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 16/KOL/2022
Assessment Year: 2013-2014**

***M/s. Jai Balaji Industries Limited,.....Appellant
5, Bentinck Street, Kolkata-700001
[PAN: AAACJ7961J]
-Vs.-***

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-4(1), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107***

Appearances by:

Shri Punit Agarwal, CA and Khushaboo Rai, ACA, appeared on behalf of the assessee

Smt. Ranu Biswas, Addl. CIT (DR), appeared on behalf of the Revenue

Date of concluding the hearing : May 19, 2022

Date of pronouncing the order: August 4, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 25.11.2021 passed for the assessment year 2013-14. Though the assessee has taken four grounds of appeal, but basically its grievances revolve around a single issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.11,45,372/- made by the Id. Assessing Officer to the taxable income of the assessee.

2. The assessee has filed its return of income for A.Y. 2013-14. Its case was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Id. Assessing Officer that there is some mismatch between the receipts shown by the assessee, vis-a-vis as per 26AS i.e. TDS details. He made the following additions:-

Sl. No.	Section	Name of the Party	Amount as per 26AS
1.	206CE	Tata Metaliks DI Pipes Limited	Rs.8,79,718/-
2.	194J	HEG Ltd.	Rs. 55,150/-
3.	194C	Public Health Engg. Division	Rs.2,10,504/-

3. The assessee carried the matter in appeal before the Id. CIT(Appeals), filed written submissions and explained its stand. The Id. CIT(Appeals) called for a remand report and thereafter upheld the additions by recording the following finding:-

"In this ground of appeal the appellant has disputed the addition of Rs.11,45,372/- made by the AO holding the same to be the income received by the assessee based on the information collected from Form 26AS. The appellant has argued that it has not received any such receipt in the year under consideration and that the addition has been made without verifying the facts and without negating the claim of the assessee.

In the assessment order u/s 143(3) of the Act passed on 30.03.2015, additions on this issue were made in respect of the following parties:

Sl. No.	Name of the Party	Amount as per 26AS (in Rs.)	Section Code as per 26AS
1.	Tata Metaliks DI Pipes Limited	Rs.8,79,718/-	206CE
2.	HEG Ltd.	Rs. 55,150/-	194J
3.	Public Health Engg. Division	Rs.2,10,504/-	194C

Based on the submissions of the appellant, the matter was remanded to the AO so that the same can be examined after providing opportunity to the appellant.

In his Remand Report dated 26.10.2021, the AO has rebutted the claims of the assessee in a party wise manner and has stated that the assessee has failed to submit any documentary evidences relating to its claims. With respect to Tata Metaliks DI Pipes Ltd, the appellant has failed to submit details of scrap claimed to have been purchased and the figures of corresponding sales. With respect to HEG Ltd, although the assessee has claimed TDS of Rs.5515/-, but the assessee failed to offer Rs.55150/- in its return of income. With respect to its claim towards Public Health Engg. Division, the assessee failed to submit any supporting documents before the AO.

The Remand Report of the AO was provided to the appellant for its comments, to which the appellant has not been able to establish whether the purported receipts (as tabulated above) has been included in its total income and neither has the appellant been able to clarify the contentions of the AO by producing the corresponding documentary evidences. The A/R of the appellant was unable to provide any satisfactory explanation and the said ground has not been pressed any further. Therefore, in the circumstances, I cannot find myself disagreeing with the contentions of the AO and the additions made by the AO to the tune of Rs.11,45,372/- same are accordingly confirmed”.

4. Before us, ld. counsel for the assessee while impugning the findings of Revenue Authorities filed a written note explaining each transaction specifically. In order to understand the issue more scientifically, we deem it appropriate to take note of the written submission filed by the assessee, which reads as under:-

1. The Ld. AO has made additions with respect to the following parties;

<i>Sl. No.</i>	<i>Section</i>	<i>Name of the Party</i>	<i>Amount as per 26AS</i>
<i>1.</i>	<i>206CE</i>	<i>Tata Metaliks DI Pipes Limited</i>	<i>Rs.8,79,718/-</i>
<i>2.</i>	<i>194J</i>	<i>HEG Ltd.</i>	<i>Rs. 55,150/-</i>
<i>3.</i>	<i>194C</i>	<i>Public Health Engg. Division</i>	<i>Rs.2,10,504/-</i>

2. At the outset, it is pertinent to mention that the above-mentioned parties in SI no. 1 & 3 are the sundry creditors of the assessee company. The company had made some purchases from the respective parties and accordingly made payment to them. One of the possible views is that the impugned companies might have deducted the TDS mistakenly. The assessee did not take into the consideration those amounts as its income since it did not receive any amount from them. Therefore, the assessee did not make any default in computing its total income and the addition made by the AO is unjustified and needs to be deleted. For the sake of your honors convenience the transactions with such parties are briefly discussed hereunder;

With regard to transactions with M/s Tata Metaliks PI Pipes Limited.

With respect to the transactions made with M/s Tata Metaliks DI Pipes Limited, we would like to bring into your kind attention that the said transaction is related to the purchase of scrap from M/s Tata Metaliks DI Pipes Limited and for the same the said party has collected tax at source from the assessee u/s 206CE in respect of the following amounts shown as per 26AS:

Sl. No.	Section	Transaction date	Amount paid	Tax collected at source by the seller
1.	206CE	11.03.2013	Rs.3,15,898/-	Rs.3,578/-
2.	206CE	02.02.2013	Rs.4,97,617/-	Rs.5,638/-
3.	206CE	02.02.2013	Rs.66,202/-	Rs.750/-

In this regard, we would like to bring into your kind notice that the assessee company for purchasing scrap materials from Tata Metaliks DI Pipes Ltd. made an advance payment of Rs. 9,39,708/- to the mentioned party on 02.02.2013 through cheque no. 405741 dated 02.02.2013. It is a regular business practice on part of Tata Metaliks DI Pipes Ltd. to take the money in advance for the sales to be made by them. Hence, the assessee in the normal course of transactions made advance for purchase of scrap to be purchased by them. Here it is pertinent to mention that though the advance was made in the F.Y 2012-2013 relevant to AY 2013-14 but the purchases were recorded in the subsequent year as the materials were received in the subsequent year. Moreover, the amount recorded in the books of the assessee (ledger enclosed at page no. 1 of Paper Book) is slightly differing with the amount shown as per 26AS because of adjustments in the bill value which is quite natural in these type of transactions. Therefore, we can see that the transaction with Tata Metaliks DI Pipes Ltd. being in nature of purchase, cannot be treated to be the income of the assessee. As per the provisions of TCS the seller is required to collect tax at source from the buyer which the impugned party has done and accordingly the amount was reflected in SI no-3 of Part B of 26AS of the assessee which the Ld. AO has by mistakenly treated as income of the assessee. The addition is purely of mis-conceptual nature. Hence, the addition made by the Ld. AO of Rs. 8,79,718/- is unjustified and needs to be deleted.

With regard to transactions with M/s HEG Limited.

Also, we would like to bring into your kind notice that the transaction amount reflected with the party M/s HEG Limited is actually a refund made by the party to the assessee for excess payment made to them against purchases on which they by mistakenly had deducted the Tax at source u/s 194J. The refund was made on 09.05.2012 through cheque no. 088450 drawn on State Bank of India (as per ledger details enclosed at page no. 3-4 of Paper Book). The refund being made against the excess value paid to them against purchases. Therefore, the same need not to be included in the income of the assessee. This addition is also outcome of the misconception of the AO needs to be deleted.

With regard to transactions with M/s Public Health Engineering:

In this regard it is submitted that the assessee has sold pipes to M/s PHE during the year under consideration and has received payments from them. The nature of transactions between the assessee and M/s PHE is that of Seller and buyer and does not attract the provisions of TDS at all. The assessee has never provided any service to the impugned party, the nature of transactions entered into are that purchase and sale, (copy of ledger enclosed at page no. 2

of paper Book). Thus the said party has by mistakenly deducted tax at source. Therefore, the addition on this count also needs to be deleted.

1.3 Moreover, it is also pertinent to say that the addition in income of an assessee cannot be made just by relying on the 26AS available. It is unjustified as any addition just based on the 26AS can be vague and the same can appear because of any mistake committed by someone else”.

5. During the course of hearing, we have gone through these details with the assistance of ld. representative. We have also gone through the remand report dated 26.10.2021, whose copy has been placed on record by the assessee. A perusal of the finding of the ld. 1st Appellate Authority would reveal that the ld. CIT(Appeals) has failed to appreciate the nature of transactions. The assessee has pointed out that it has made advance payment of Rs.9,39,708/- to Tata Metaliks DI Pipes Limited for purchase of scrap materials. This claim of the assessee has been rejected by the Revenue Authorities on the ground that this exact amount is not discernable from the statement of 26AS. The assessee has explained its position that in the statement of 26AS, the amount for which a bill was prepared by the concerned authority would reflect and sometime it is not necessary that advance given by the assessee should match ultimately with the purchases made by it. The advance could be further adjusted for other purchases. This simple thing has not been appreciated by the revenue authorities. The ld. Assessing Officer keeps on making the reference of Bank account, partial payments, etc. If he has any doubt, he should ask Tata Metaliks DI Pipes Limited. In that exercise, lot of unnecessary litigation as well as wastage of resources could be avoided. Similar is the situation with regard to other small issues by making reference of irrelevant things the disallowance has been made. The simple way for the ld. Assessing Officer was to cross verify from the concerned party, without adopting that course, he keeps on drawing inference of defects in the details of assessee by way of a deductive reasoning method. On due consideration of the details, we are of the view that the disallowance is not sustainable. We allow the appeal of the assessee and delete the disallowance.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on August 4, 2022.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 4th day of August, 2022

*Copies to : (1) M/s. Jai Balaji Industries Limited,
5, Bentinck Street, Kolkata-700001*

*(2) Deputy Commissioner of Income Tax,
Central Circle-4(1), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107*

(3) Commissioner of Income Tax(Appeals)-21, Kolkata;

(4) CIT- , Kolkata

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.

