

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)

AND

SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A No.09/Mum/2022
(Assessment year : 2012-13)

The ACIT-4(1)(1), Mumbai Room No.640, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020	vs	M/s BBH Communications India Private Limited, 28, Dr. Earnest Borges Road, Parel, Mumbai-400 012 PAN: AADCB7259E
APPELLANT		RESPONDENT

Assessee represented by	Shri Pratik Sha, Dhanesh Bafna, Yogesh Malpani
Department represented by	Shri Chetan Kacha, Sr.ARr

Date of hearing	02/03/2023
Date of pronouncement	27/03/2023

O R D E R

Per: S.Rifaur Rahman (AM):

This appeal has been filed by the Revenue against the order dated 02/11/2022 passed by the National Faceless Appeal Centre (National Faceless Appeal Centre), Delhi)(hereinafter 'the Ld.CIT(A)')for the assessment year 2012-13.

2. Brief facts of the case are that assessee filed its return of income on 27/11/2012 declaring taxable income of ₹.Nil, after allowing carry forward of current year's losses totalling to (-) ₹.1,94,48,261/-. The case was selected for scrutiny under CASS and notices under section 143(3) & 142(1) of the Income Tax Act, 1961 ('the Act') were issued and served on the assessee. In response, Authorised Representative of the assessee attended and filed the relevant information as called for.

2.1 Assessee is in the business of advertising agency solutions. During the assessment proceedings, assessing officer observed that assessee has declared gross turnover of ₹. 21,13,37,370/- as revenue from operations and other income of ₹.1,01,821/- over which the assessee has declared net loss of (-) ₹.2,43,56,259/- During the course of assessment proceedings, Assessing Officer observed that assessee has declared income as per Profit & Loss Account at ₹.2,14,39,191/- and TDS declared at ₹.1,67,45,383/- whereas the gross revenue declared as per form 26AS is ₹.25,10,18,425/- and the TDS deducted declared on the same amount as declared by the assessee in the financial statement. The Assessing Officer observed that there is a difference of ₹. 3,95,79,233/-. The assessee was asked to explain the difference. In response, assessee filed a reconciliation statement as under:-

I	Income as per Financials as on 31/3/2012		211,337,370
II	Add: Income offered to tax in the A.Y.2011-12 on which TDS is deducted by the clients in current year i.e. A.Y. 2012-13 (Refer Note 1 Below)	28,298,438	

	Income as per Form 26AS in inclusive of Service Tax and as per Financials is exclusive of service tax. Service tax element on income as per Form 26AS	23,440,524	51,738,962
III	(I+II)		263,076,332
IV	Less : Income received in foreign currency, Tax on which is not deducted and hence not reflected in Form 26AS Income offered to tax in A.Y. 2012-13 on which TDS Certificate received in Next Year i.e. A.Y. 2013-14	11,156,408 901,498	 12,057,906
V	Amount paid & credited as per form 26AS and TDS Certificates as on 31.03.2012		251,018,426

After considering the submissions of the assessee, Assessing Officer observed that assessee has received total sum of ₹.251,018,424 as income from contract fees for professional and technical services during the period under consideration and TDS has been deducted at source. However, assessee has declared lesser sum in its Profit & Loss Account but has claimed an identical amount of TDS on the entire amount. Further, he observed that the contention of the assessee that a sum of ₹.2,82,98,438/- has been offered to tax in the assessment year 2011-12, therefore, lacks merit since the assessee has claimed full TDS in the present year, but has offered to tax only a lesser amount as declared by it in its Profit & Loss Account. Accordingly, he rejected the submissions of the assessee and proceeded to make the difference in income as per Form 26AS as income of the assessee.

2.2 Aggrieved, assessee preferred appeal before the Ld.CIT(A) and filed a detailed submissions before Ld.CIT(A) and after considering the detailed

submissions of the assessee, Ld.CIT(A) allowed the ground raised by the assessee in this regard by observing as under:-

“4.4 It could be seen from the above explanation of the assessee that this was already presented to the AO at the time of assessment. There are five items of reconciliation which are discussed as follows.

(i) It is seen that the sum of Rs.2,11,55,899 is a difference on account of service tax which was included in the receipts as per Form 26AS. The clients of the assessee have deducted tax at source on not only the principal amounts paid to the assessee but also on the service tax component. On the other hand, the assessee is following the exclusive system of accounting meaning thereby that the indirect tax component is not routed through the P&L A/c either as income or expense. This being the case, the difference between Form 26AS and the books of accounts to Rs.2,11,55,899 is duly explained. The other item of difference is Rs.4,00,30,600 on account of income offered by the assessee in AY 2011-12 as well as in AY 2013-14 but it was reflected in Form 26AS for the present AY 2012-13. The assessee has filed evidence before me as mentioned in his written submissions to prove the claim that the income amounting to Rs.4,00,30,600 has been accounted in AY 2011-12 and not in AY 2013-14. The discrepancy to the extent of Rs.4,00,30,600 is therefore duly explained.

(ii) The assessee has also claimed that a sum of Rs. 1,10,35,765 which is income offered during the year but not reflected in Form 26AS for this year but has been reflected in Form 26AS for AY 2013-14. Similarly, a sum of Rs. 1,11,56,408 is income offered during the year which is not reflected in Form 26AS as it was received in foreign currency without deduction of tax. The explanation of the assessee reproduced above on these two issues is self-explanatory and therefore this reconciliation is in order.

(iii) Lastly, the assessee has pointed out that there was a difference of Rs.5,84,910 which is on account of provisions for expenses created by his clients as well as reimbursement made to him on which TDS has been deducted. In this regard also, the submissions of the assessee are self-explanatory.

5. It is seen that the erstwhile CIT(A)-22, Mumbai had called for a remand report from the AO on this issue and the AO vide her report dated 21-08-2015 has submitted asunder:

In the extant case, he AO has made an addition of Rs.3,95,79,233 to the income of the assessee on account of difference in income as per form 26AS and income as per the P&L Account, the details of which are as under:

<i>S No.</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
<i>1</i>	<i>Income as per Form 26AS</i>	<i>25,10,18,424/-</i>
<i>2</i>	<i>Income as per the P&L Account</i>	<i>21,14,39,191/-</i>
<i>3</i>	<i>Difference</i>	<i>(3,95,29,233)</i>

The assessee has contended that it had provided the reconciliation to the AO during the course of assessment proceeding. A copy of the reconciliation has been enclosed along with this letter. On perusal of the same, it is observed that the assessee has merely provided the reconciliation in a tabulated form. However, the same is not sufficient for the AO to consider and allow the credit to the assessee. Every claim made by the assessee should have a documentary proof in the form of TD5 certificated. Each mismatched entry is to be thoroughly verified to ascertain whether the income has been offered to tax and that the TDS credit has not been allowed already in any earlier year or the subsequent year

It is further stated that verification of the records reveal that the assessee had claimed TDS credit of Rs. 1,67,45,3837- in its return of income. Therefore, though the TDS as per form 26AS is Rs, 25,10,18,4247- however, the credit given u/s 143(1) vide order dated 26/03/2013 is restricted to Rs 1,67,45,3837-. Copy of the ITD screenshot depicting same is enclosed as Annexure-1. However, vide order u/s 143(3) dated 04/02/2015, the TDS credit given is Rs 1, 67,45,3787- (Copy of the ITD screenshot depicting the same enclosed as Annexure-2) in conformity with the details of tax deducted available on TDS system (Copy of the ITD screenshot depicting the same is enclosed as Annexure-3).

The TDS credit claimed by the assessee when same is not reconciled with the income offered to tax in a given year is a matter of verification. Thus, the material made available before the AO was not sufficient to allow the assessee its claim.

5.1 It could be seen from the remand report that the same is general in nature and it has not addressed the very specific reconciliation along with documentary evidences submitted by the assessee. After due consideration of the remand report and the submission of the assessee reproduced above, I am of the view that the assessee is sufficiently explained the discrepancy of Rs.3,95,79,233 and therefore this addition is deleted. Ground 2 is accordingly allowed."

3. Aggrieved, the Revenue is in appeal before us raising the following grounds of appeal:-

"1. On the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition made by the AO on account of difference between income as per financials and income as per form 26AS.

2. On the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition on account of difference between income as per financials and income as per form 26AS without appreciating the fact that the assessee has failed to furnish documentary evidences to substantiate its claim.

3. On the facts and circumstances of the case and in law the CIT(A) erred in ignoring the facts furnished by the AO in the remand report after verifying the additional evidences."

4. At the time of hearing, Ld. departmental representative brought to our notice paragraph 5 of appellate order in which Ld.CIT(A) has discussed the remand report from the Assessing Officer and he submitted that assessee has not filed any supporting documents with reference the chart submitted before the authorities. He relied on the orders of Assessing Officer.

5. On the other hand, the Ld.AR submitted that basically, the difference is between the amount declared by the assessee in its Profit & Loss account and the amount disclosed in form 26AS. He submitted that the method of accounting adopted by the assessee is the reason for difference in the amount disclosed in form 26AS. The basic difference is only the service tax booked by the assessee which is net of service tax as well as declared in form 26AS. This fact was properly appreciated by the Ld.CIT(A).

6. Considered the rival submissions and perused materials placed on record. We observe from the record that the basic reasons in the addition made by Assessing Officer is the amount declared by the assessee in the Profit & Loss Account and form 26AS. the major difference brought out in the submissions and paper book submitted before us that the assessee records the net income in its Profit & Loss Account excluding service tax whereas the gross income declared in form 26AS consists of service tax. The major difference is to the extent of ₹.2,82,98,438/- , which is relating to service tax. It has also been brought to our notice that apart from difference in service tax, the assessee has recorded the difference on account of income offered in returned income of the preceding year and also certain income relevant to A.Y. 2013-14. However, the same were reflected in the gross income declared in form 26AS. The assessee has clearly

filed a detailed reconciliation statement before the Ld.CIT(A) and after considering the detailed reconciliation, we do not see any reason to disturb the findings of the Ld.CITA). Accordingly grounds raised by the Revenue are dismissed.

7. In the result, appeals filed by the Revenue is dismissed.

Order pronounced in the open court on 27th March, 2023.

Sd/-

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dt : 27 March, 2023

Pavanan

प्रतिलिपिअग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त (□) /The CIT(A)-
4. आयकरआयुक्त CIT
5. विभागीयप्रतिनिधि, आय. अपी. अधि. , मुंबई/DR,
ITAT, Mumbai
6. गार्डफाइल/ Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)
ITAT, Mumbai