

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.2852/Del/2015
[Assessment Year: 2011-12]**

Solutions Integrated Marketing Services Private Ltd. (Now merged with TLG India Private Limited), 16 th Floor, Tower A, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel, West Mumbai-400013	Vs	The Deputy Commissioner of Income tax, Range-24(1), (old Range 9(1), Room No.163, C.R. Building, I.P. Estate, New Delhi
PAN-AABCS2883D		
Assessee		Revenue

Assessee by	Sh. Ketan K. Ved, CA
Revenue by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	07.08.2024
Date of Pronouncement	22.08.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax(Appeals)-8, New Delhi, dated 04.02.2015 pertaining to Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee reads as under:-

“Addition of Rs.10,75,12,135/- to the total income

1. The learned CIT(A) erred in not deleting the addition made by the Assessing Officer as undisclosed income of Rs. 10,75,12,135.

2. The learned CIT(A) erred in observing that the appellant is not following the correct accounting standard.

3. The learned CIT(A) erred in not appreciating the fact that the entire income as reported in Form 26AS is offered to tax by the

appellant and hence question of taxing undisclosed income does not arise.

4. *Without prejudice to the above, the learned CIT(A) erred in not directing the Assessing Officer ('AO') that if Rs. 10,75,12,135 is taxed on the basis that the corresponding TDS credit is claimed in the current assessment year, the same should not be taxed again in the earlier or subsequent assessment years, wherein it has been accounted and offered to tax by the appellant.*

Others

5. *The learned CIT(A) has erred in not adjudicating on grounds of appeal number 3.1 to 3.6 as raised before the CIT(A).*

5.1. *The learned CIT(A) erred in not directing the AO to consider the current year business loss of Rs.2,23,09,961/- as declared by the appellant in the return of income, while computing the assessed business income.*

5.2. *The learned CIT(A) erred in not directing the AO to not to adjust a sum of Rs. 1,92,09,526 as refund already issued and not to withdraw interest under section 244A as no such refund has been actually issued to the appellant.*

5.3. *The learned CIT(A) erred in not directing the AO to grant credit of TDS to the extent of Rs.21,64,741/-.*

5.4. *The learned CIT(A) erred in not directing the AO to delete the interest levied under section 234B of Rs. 12,92,811/-.*

5.6. *The learned CIT(A) erred in not directing the AO to delete the interest levied under section 234D of Rs. 1,58,393/-.*

The learned CIT(A) erred in not directing the AO to drop the initiation of penalty proceedings under section 271(1)(c)."

3. Brief facts of the case:- The assessee company is engaged in the business of developing and implementing integrated marketing programmers for promotion and marketing of client's goods and services. The assessee company has filed its returned of income on 25.11.2011 declaring total income of Rs.4,97,719/-. The return was processed u/s 143(1) and it was also selected for scrutiny under CASS. The AO observed that the sales shown by the assessee in the profit & loss account was not matching with the amount shown by the TDS Certificates filed by the assessee. The AO directed for reconciliation of the sales as per P/L

account and as per TDS Certificates. The AO reproduced the sales as per P/L account sales as per TDS Certificates of 39 concerns on page 2 of the order and noted that total sales as per TDS certificates was Rs.56.92 crores, whereas the assessee had declared sales as per profit & loss account at Rs.46.17 Crores and thus there was a difference of Rs.10.75 Crores. The assessee was asked to reconcile the same. The assessee submitted that the same was due to the mistake of the client. The AO held that it was apparent that the assessee had not disclosed Rs.10,75,12,135/- of worth of sales leading to understatement of income. The AO, accordingly, added back the same to the income of the assessee as done in the earlier assessment year. This is the main grievance of the assessee in the appeal.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A).

5. The Ld. CIT(A) after considering the facts of the case directed the AO to verify the claim of the assessee and allow the TDS as per sub-rule-3 and Rule 37BA of the I.T. Rules. The ld. CIT(A) also observed that if the assessee wants to claim TDS, it has to offer corresponding receipts during the year. The relevant discussion of the ld. CIT(A) in para no.3 is reproduced as under

"I have considered the assessment order, written submissions filed by the Ld. AR of the appellant and also oral submissions made by the Ld. AR of the appellant. Ld. Assessing officer tabulated the total sales as per profit & loss account disclosed by the appellant and sales as per TDS Certificates furnished by the appellant. Total sales as per TDS Certificates (Form 26AS) comes to Rs. 56.92 crores. However, appellant has declared the sales as per profit & loss account Rs. 46.17 crores. Thus, there is a difference of Rs. 10.75

crores which Ld. Assessing officer has added in the total income of the appellant. With regard to reconciliation of receipt as per TDS certificates and P/L account, appellant simply filed a chart showing party wise details of gross receipts as per TDS Certificates and sales book by the assessee in the P/L account. It was noticed from the perusal of the said chart that in respect of certain parties, the receipts shown by the assessee in the P/L accounts were sort of the gross receipt as per TDS Certificates. The Ld. AR of the appellant pleaded during the appellate proceeding that appellant enters into an arrangement / contracts to provide services to the clients. However, due to certain commercial bottlenecks, the appellant is unable to render the services within stipulated time. As per the Revenue Recognition Policy followed by the appellant [as per Schedule 18] Notes to Accounts, Income from sale of services are recognized on completion of the respective job. Amounts realized against the invoice raised to the customers before completion of jobs are shown as advance billing to customers under the head 'current liability'. Direct project expenditure incurred in jobs not completed at the end of the year is carried forward as job-in progress. Ld. AR of the appellant further pleaded that as per accounting standard-9 on "Revenue Recognition" of ICAI appellant does not account the income unless a particular assignment/ project is completed. However, the client deducts the tax on provision basis. This in-turn result in timing difference of TDS credit claimed in the return of income and income accounted by the appellant. He further relied on the judgments of Jagatjit Industries Ltd (339 ITR 382) and pleaded that he is consistently followed the same accounting contracts which was accepted by the department. I am not agreed with the arguments of the Ld. AR of the appellant. From the facts given by the Ld. AR of the appellant, it is clear that the sales as per TDS Certificates are required to be reconciled because in one case, 2 times TDS amounts was reflected in a particular case. There was no business transaction with the appellant. However, TDS amount was reflecting against the appellant and there was some change in the TDS due to revised TDS return filed by the deductors. However, from the chart submitted by the Ld. AR of the appellant, it is clear that TDS amount was deducted against the huge amounts shown as billed or payable to the appellant but, this amount is not reflecting in the P/L account. The simple issue before me is, appellant is claiming the Tax deducted at source in the current year. However, it is not showing the corresponding receipt in the same year. If the appellant has claimed credit for amount of Tax Deducted at Source in a particular year then, the corresponding receipt in respect of the said amount of Tax Deducted at Source should also be declared as income in the P/L account for the same year. Appellant cannot choose on its will to claim the credit of TDS in one year and declared the corresponding receipt in some other years. The taxes must be paid in the year in which it is due. The issue is continuously raised by the Ld. Assessing officer from the AY 07-08

onwards. In earlier years, Hon'ble ITAT has set-aside this issue to the Ld. Assessing officer to check the reconciliation filed by the Ld. AR of the appellant before the Ld. Assessing officer. However, for the 07-08 and 09-10, Ld. Assessing officer invoked the provision of section 199 and also considered the sub-rule 3 of 37BA of the I. T. Rules.

After considering the orders of earlier years passed by the Hon'ble ITAT and also by the CIT(A), Ld. Assessing officer is directed to verify the charts submitted by the Ld. AR of the appellant during the assessment proceeding. The appellant is claiming the TDS however, not showing the corresponding receipt of the TDS in this year. This practice cannot be allowed and nowhere in the AS- 9, it is mentioned. After considering the accounting standard-9, I am of the view that appellant is not following the correct accounting standard. In view of these facts, Ld. Assessing officer is directed to verify the claim of the appellant and allow the TDS as per sub-rule 3 and rule 37BA of the I. T. Rules. If appellant wants to claim TDS, it has to offer corresponding receipt during the same year.”

6. Against the above order, the assessee is in appeal before us. The Ld. AR submitted that similar matter came in the case of the assessee for AYs 2007-08 and 2009-10. On similar facts, it was submitted that the Tribunal in ITA Nos.2200 and 2201/Del/2013, vide order dated 24.10.2013, had agreed with the AO that the credit of TDS in a financial year can be granted only when income corresponding to such TDS is assessed to tax in the said financial year. Further, it was submitted that the Tribunal directed that the assessee will be at liberty to approach the Assessing Officer for claiming credit of TDS in the concerned year and the AO may allow the claim in accordance with law. The ld. AR submitted that similar direction may be given and the case may be set-aside to the file of the AO.

6.1. The Ld. DR supported the orders of the authorities below.

7. We have heard both the parties and perused the material available on record. It is seen that the matter came up before the Tribunal in AY

2007-08 and 2009-10 in the case of the same assessee in ITA Nos.2200 and 2201/Del/2013. Vide order dated 24.10.2013, the Tribunal held that the credit of TDS in a financial year can be granted only when income corresponding to such TDS is assessed to tax in the said financial year. Further, the Tribunal directed that the assessee will be at liberty to approach the Assessing Officer for claiming credit of TDS in the concerned year and the AO may allow the claim in accordance with law. The relevant paragraphs of the order is reproduced hereunder for ready reference:-

"The present two appeals are directed at the instance of assessee against the separate orders of even date i.e. 29.1.2013 passed by the Learned CIT(Appeals) on the appeals of assessee for assessment years 2007-08 and 2009-10. The issues agitated by the assessee in both the appeals are common, therefore, we heard them together and deem it appropriate to dispose of them by this common order. The first common grievance of the assessee is that Learned CIT(Appeals) has erred in confirming the addition of Rs.29,76,191 and Rs.26,31,234 in assessment years 2007-08 and 2009-10 respectively.

2. *The brief facts of the case are that the assessee company is engaged in providing marketing services including consultancy for sales promotions, product exhibiting and organizing and arranging the launching of products and services by its clients. It has filed its return of income on 31.10.2007 and 29.9.2009 declaring an income of Rs.15,02,170 and Rs.55,38,482 in assessment years 2007-08 and 2009-10 respectively. In assessment year 2007-08, an assessment order was passed under sec. 143(3) on 18.12.2009 at an income of Rs.882,86,720. The dispute traveled up to the level of ITAT. The ITAT has set aside the issue to the file of the Assessing Officer. The one of the issues set aside by the ITAT to the Assessing Officer pertains to grant of TDS. Learned Assessing Officer has made an addition of Rs. 167,14,582. This addition was made on the ground that assessee has declared lesser income in comparison to the TDS. In a set aside assessment, Assessing Officer did not give credit of TDS amounting to Rs.29,76,191. The discussion made by the Assessing Officer reads as under:*

"5. The above submission of the assessee has been considered. From the above, it is clear that the assessee has claimed for TDS of Rs.29,76,191 the corresponding income amounting to Rs.5,46,06,549 and Rs.84,74,853 pertaining to A.Y. 2006-07 & A.Y. 2007-08 respectively. Section 199 of the Act says:-

Credit for tax deduction - (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or depositor or owner of property or of unit-holder or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under sec. 203 in the assessment made under this Act for the assessment year for which such income is assessable.

5.1 In view of the foregoing provision, credit for TDS of Rs.29,76,191 is not allowable in the A.Y. 2007-08. Hence, the same is being withdrawn as per the provisions of Sec. 199 of the Act."

3. In assessment year 2009-10, this is the first round of assessment proceedings. The Assessing Officer did not give credit of TDS of Rs.26,31,234 under the similar circumstances.

4. The appeal to the learned CIT(A) did not bring any relief to the assessee.

5. With the assistance of learned representatives, we have gone through the record carefully. When we confronted the learned counsel for the assessee to show us the income during these years for which TDS credit can be granted as per law, the learned counsel for the assessee made a limited prayer that Assessing Officer be directed to give the credit of the TDS in the year in which corresponding income has been assessed. We confronted the learned counsel for the assessee to show us the provision under which ITAT can give such direction in an assessment year for which the appeal is not pending before the ITAT. The ld. Counsel submitted that ITAT has plenary power to issue any directions which are in the interest of justice. He drew our attention towards section 254 of the Act. However, we do not find any force in the contentions of the learned counsel for the assessee. Assessing Officer has rightly observed that credit of TDS can be granted only when income corresponding to such TDS is assessed to tax. The assessee will be at liberty to approach the Assessing Officer for claiming the such credit in the concerned year and Assessing Officer may consider the prayer of assessee sympathetically in accordance with law. Ground No. 1 in both the appeals is disposed off.

8. Respectfully following the above decision of the Tribunal in assessee's own case (supra) on this issue, we hereby hold that credit of TDS in a financial year may be granted only when income corresponding to such TDS is assessed to tax in the said financial year. Further, the assessee will be at liberty to approach the Assessing Officer for claiming

the such credit in the concerned year in which income is offered and the AO may allow the same in accordance with law. Ground no.1 to 4 of the appeal is allowed for statistical purposes.

9. In ground no.5, the assessee submits that the ld. CIT(A) did not adjudicate on grounds of appeal no.3.1 to 3.6 as raised before the ld. CIT(A). The same ground has been raised by the assessee in ground nos.5.1 to 5.4 of the present appeal. Regarding the plea of the assessee in ground no.5.1, the AO is directed to verify the claim of the assessee and to consider the current year business loss of Rs.2,23,09,961/- while computing the assessed income as per law.

10. With respect to ground no.5.2, the AO is directed to verify the claim of the assessee and to allow interest u/s 244A of the Act as per law.

11. With respect to ground no.5.3, the AO is directed to verify the claim of the assessee and to allow claim of TDS amounting to Rs.21,64,741/- as per law.

12. With respect to ground no.5.4, the AO is directed to verify the claim of the assessee and to levy interest u/s 234B of the Act as per law.

13. With respect to ground no.5.5, the AO is directed to verify the claim of the assessee and to levy interest u/s 234D of the Act as per law.

14. With respect to ground no.5.6, the assessee has requested for dropping of initiation of penalty proceedings u/s 271(1)(c) of the Act. This ground is premature in nature. The assessee would get independent

notice for initiation of penalty and it has a remedy of appeal against the imposition of any penalty. Hence, this ground is rejected.

15. In the result, this appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd August, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Dated 22.08.2024.

SK

Copy forwarded to:

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

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,