IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA Nos.13 & 14/PUN/2019
निर्धारण वर्ष / Assessment Years : 2013-14 & 2012-13

M/s. Gensys Technologies Pvt. Ltd., 4th Floor, Devgiri, Plot No.14, S.No.17/1B, Kothrud, Pune – 411 038 PAN : AACCG5346C	**Vs.**	DCIT, Circle-1(2), Pune
(Appellant)		(Respondent)

Appellant by	Shri M.K. Kulkarni
Respondent by	Shri Rajesh Gawali
Date of hearing	14-05-2019
Date of pronouncement	15-05-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee relate to assessment years 2012-13 and 2013-14 involving a common issue. That is why, I have clubbed them for disposal by a consolidated order.

2. There is a delay of 428 days in presenting these appeals before the Tribunal. The assessee has filed an affidavit in support of the reasons which led to the filing of the instant appeals belatedly. I am satisfied with the reasons. As such, the delay is condoned and the appeals are admitted for disposal on merits.

3. Briefly stated, the facts for the A.Y. 2013-13 are that the assessee is engaged in providing Structural Design Engineering services. On perusal of the Profit and loss account, the Assessing Officer (AO) observed that receipts from profession were shown at Rs.3,28,05,321/-. As against that, receipts in Form No.26AS were reflected to the tune of Rs.3,67,55,782/-. On being called upon to explain the reasons as to why the differential amount was not offered for taxation, the assessee submitted explanation about a sum of Rs.11,03,000/- which was accounted for in the succeeding assessment year. It further submitted that service tax of Rs.32,55,463/- was shown separately. The AO got convinced with the assessee's submissions to this extent. The balance amount of Rs.5,85,303 [Rs.3,67,55,782 minus Rs.3,61,70,479 (Rs.3.18 cr as declared by the assessee + service tax shown separately at Rs.32.55 lakh + receipts shown in the succeeding year Rs.11.03 lakh)] was added to the assessee's total income, which came to be confirmed at the hands of the ld. CIT(A). The assessee is aggrieved by the confirmation of the addition.

4. I have heard both the sides and gone through the relevant material on record. The ld. AR fairly submitted that a sum of Rs.5,85,303/- was, in fact, not recorded in the total receipts. He, however, claimed that only the profit element embedded in this amount should be charged to tax and not the entire amount of receipt. For this proposition, he relied on a judgment dated 12.12.2017 of the Hon'ble Gujarat High Court in *CIT Vs. Hema Mahendra Pachchigar 2018 TaxPub (DT) 0218 (Guj-HC).* He further submitted that SLP against this judgment has been dismissed.

5. In that case, the difference arose in the amount of receipts as per Form 26AS, which was added by the AO. The Tribunal held that only the profit element should be added on the amount of such receipts. It is but natural that a receipt cannot be charged to tax and only profit element is to be included in the total income. The rationale behind this proposition is that the expenses incurred for earning a particular revenue should be allowed as deduction in computing the income. If in a particular situation, the assessee has not recorded receipt and also not shown the corresponding expenses against that receipt, obviously, only the profit element in the receipt will be charged

to tax. On the other hand, if all the expenses are actually claimed as deduction but only a part of the receipt is not shown, that would call for inclusion of the amount of receipt in the total income because the matching expenses have already been taken into consideration in the determination of total income.

6. Adverting to the facts of the instant case, I find that there is a net difference in the receipts to the tune of Rs.5,85,303/-. It is not the case of the assessee that it was carrying on some business outside the books of account and the differential amount added by the authorities, is a part of such business and the parallel expenses against such receipt were also not recorded. Had this been the situation, the assessee would have been certainly entitled to deduction for expenses incurred against such unaccounted receipts, in which case addition of profit rate would have been warranted. Per contra, the instant situation is that the assessee was not carrying out any business outside the books of account. All the receipts and expenses were recorded. By mistake, a part of the receipt remained to be incorporated in the books of account. The ld. AR has not drawn my attention towards any material to indicate that some undeclared expenses were also incurred against such unrecorded receipt. Since the

expenses relating to such undeclared receipt of Rs.5,85,303/- were already accounted for in the total expenses claimed and allowed, there can be no rationale in allowing further deduction towards expenses *qua* this receipt for the purpose of inclusion in the total income. I, therefore, hold that the decision relied on by the ld. AR is not applicable to the facts of the instant case and the decision of the authorities below in this regard is unimpeachable.

7. The facts for the A.Y. 203-14 are *mutatis mutandis* similar. For this year, the assessee recorded receipts in its books of account at Rs.3,95,55,918/-. The amount of gross receipts as per Form 26AS was Rs.4,01,27,152/-. The assessee was confronted with the difference of Rs.5,75,234/-. The assessee agreed for its mistake and offered the differential amount of Rs.5,75,234/- for taxation. The ld. CIT(A) echoed the assessment order on this point, against which the assessee has come up in appeal before the Tribunal.

8. After considering the rival submissions and on perusal of relevant material on record, I find that the facts of the addition for the instant year are similar to those of the preceding year, the

appeal for which has been disposed off hereinabove. Following my view, I uphold the addition of Rs.5,75,234/- in the total income of the assessee.

9. In the result, both the appeals stand dismissed.

Order pronounced in the Open Court on 15th May, 2019.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 15th May, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
   The CIT (Appeals)-1, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
   "**SMC**" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy // Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	14-05-2019	Sr.PS
2.	Draft placed before author	14-05-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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