

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

BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A. No.2974/Mum/2015
(Assessment Year 2010-11)

E-City Entertainment Pvt Ltd, 844/4, Shah Industrial Estate, Off Ne Link Road, OPp Laxmi Industrial Estate, Andheri (W), Mumbai-53	vs	Income Tax Officer, Wd.16(1)(2), Mumbai
PAN No. AAACE5215A		
(Appellant)		(Respondent)

Appellant by	Shri Jay Bhansali
Respondent by	Smt. Beena Santosh

Date of hearing : 16-02-2017
Date of order : 27-02-2017

ORDER

Per Ashwani Taneja, AM :-

This appeal has been filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-4, Mumbai [hereinafter called CIT(A)] passed against the assessment order u/s 143 (3) dated 22-03-2013 on the following grounds:-

- 1. "The Ld. CIT (A) erred in law and facts in upholding addition of Rs. 54,40,286/- to the total income of the assessee on account of differences between receipts as per books of accounts and receipts as per the 26AS. The reasons given by him for doing so are wrong and contrary to the facts of the case and against the provisions of law.*
- 2. Having accepted the facts of the case, additional evidences and various contentions of the assessee, the Ld. CIT*

(A) ought to have deleted the entire addition made by AO solely on the basis of amounts appearing in 26AS without proving receipt/ accrual of such income in the hands of the assessee.

3. *The Ld. CIT (A) ought to have deleted the entire addition made by AO as it was proved with evidences that alleged income appearing in 26AS of the assessee has been accounted and offered by demerged companies.*

4. *The Ld. CIT (A) ought to have accepted the fact that having accepted the book results and in the absence of any defect in the books of accounts, the addition made' by the AO solely on the basis of 26AS is unwarranted, illegal and against the provisions of law.*

2. In this case, the brief facts are that during the year assessee was engaged in the business of acquiring immovable properties and construction, development and building, family entertainment centres cum malls. Assessee demerged all its real estate divisions into another companies namely E-City Real Estate Pvt Ltd and E-City Projects Constructions Pvt Ltd. Before demerger, the assessee had entered into various agreements for leasing its premises and for CMA charges. Various agreements were for long term periods spreading two years or more and were continuing even after demerger. The parties with whom these agreements were entered had paid rent to the demerged companies but continued deducting TDS using PAN of the assessee even after demerger of business. Under these circumstances, there was mismatch in the transactions appearing in Form 26AS of the assessee aggregating to Rs.2,94,73,467/- and as recorded in the Profit & Loss Account. Under these circumstances, the AO made addition to the income of the assessee on account of difference between receipts as per Form 26AS and receipts as shown in the P & L account. In appeal before CIT(A), though assessee submitted reconciliation

statement, but the confusion still continued. Therefore, addition made by the AO was not fully deleted.

3. During the course of hearing before us, it was submitted by the Ld. Counsel that assessee had submitted additional evidences and these were sent by the Ld. CIT(A) to the AO for sending remand report after carrying out requisite examination and but AO did not consider these evidences properly. Our attention was drawn on the various pages of the paper book showing that complete charts have been submitted showing that entire income has been credited in the P & L Account by the respective companies. But due to incorrect recording of PAN, wrong entries have been put in Form 26AS. It was submitted that if an opportunity is given, all these entries can be very well explained to the AO and incorrect addition can be removed. These amounts have also been assessed in the hands of other respective companies. Therefore, addition in the hands of Assessee Company has led to double assessment of same income.

4. Per contra, the Ld. DR submitted that she would have no objection, if this appeal is sent back to the file of the AO and these evidences are put before the AO for fresh examination.

5. We have gone through the entire facts and circumstances of the case and find that in this case, addition has been made due to confusion which has taken place after the exercise of demerger of the assessee company into three companies. Though assessee made an attempt to furnish requisite reconciliation statement by way of additional evidence before Ld. CIT(A), but it appears that these have not been properly examined and addition made in the assessment order has been repeated. In our view, justice and fairness demands that this appeal should go back to the file of the AO where the AO shall have full liberty to examine all these evidences as have been submitted

before us showing reconciliation of various amounts between Form 26AS and the amount credited in the P & L Account of assessee company and demerged companies. If entries found in Form 26AS have been credited by any of these companies (i.e. assessee company or demerged companies), then no addition should be made in the hands of assessee company. It is further clarified that claim of TDS shall be allowed only in the hands of that entity which has credited respective income in its P & L Account. With these directions, all the grounds raised in this appeal are sent back to the file of the AO. The AO shall pass fresh orders on these issues after giving adequate opportunity to the assessee and after considering the entire material as may be placed on record by the assessee.

6. As a result, this appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on this 27th day of February, 2017.

<i>Sd/-</i>	<i>Sd/-</i>
(C.N. PRASAD)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 27th February, 2017

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, G-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES