IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 1113/Del/2017
(Assessment Year : 2012-13)

HCL Comnet Limited 806, Sidharth, 96, Nehru Place, New Delhi PAN : AACH9667H	Vs.	DCIT, Circle-11(1), Room No. 416, C.R.Building, New Delhi
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Ajay Vohra, Sr. Adv. & Shri Arpit Goel, CA
Revenue by	Sh. Anuj Garg, Sr. DR

Date of hearing:	05.04.2023
Date of Pronouncement:	10.05.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 02.12.2016 passed in appeal no. 236/2016-17 for assessment year 2012-13, by the Commissioner of Income Tax (Appeals)-18, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 30.03.2015 u/s 143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-11(1), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. Heard and perused the record.

3. Earlier, a co-ordinate bench by order dated 04.09.2020 had allowed the appeal of the assessee. Thereafter, assessee filed a miscellaneous application u/s 254(2) of the Act submitting that the ground no. 2 raised by the assessee with regard to addition of Rs. 2,48,71,145/- has remained undecided. So a co-ordinate Bench vide order dated 17.12.2021 had allowed the application and recalled the order dated 04.09.2020 for the limited purpose of adjudicating ground no. 2 of the assessee's appeal. Accordingly now only the ground no. 2 is required to be adjudicated and the same is reproduced below :-

> *"2. That the Commissioner of Income-tax (Appeals) erred on facts and in law in upholding addition of Rs. 2,48,71,145/- made by the assessing officer on account of credit of tax deducted at source ("TDS") on deferred revenue, without appreciating that it was only a case of timing difference and no loss to the Revenue arose on account of said approach followed by the appellant."*

4. The issue covered in the Ground no 2 and 2.1 arises out of following relevant facts that during the year under consideration, the assessee has claimed the TDS of Rs. 30,11,43,053/- in its return of income. Further assessee vide its submission dated 25.03.2015 claimed additional amount of TDS amounting to Rs. 12,70,656/-. Thus the assessee has claimed total TDS of Rs. 30,24,13,709/- during the year under consideration. The assessee has shown the deferred revenue of Rs. 60,73,52,960/-. Accordingly, the Ld. AO vide order sheet entry dated 09.02.2015 directed assessee to furnish the detail of TDS claimed on the deferred revenue of 60,73,52,960/- and justification on its allowability. In compliance thereto, the Assessee filed its submission dated 23.02.2015 written reply stating as under. -

> *"Having regards to the nature of the business of the assessee, it is a common practice on the part of the assessee that during any financial year, some part of the revenue is deferred to subsequent financial year(s) and the revenue being deferred in earlier financial year(s) is booked as revenue in the relevant financial year.*
>
> *As a result, it becomes difficult for the assessee to keep a neck to neck correlation between the revenue booked in any financial year and the TDS*

deducted by the end customers. However, this being purely a case of timing difference only and there has been no loss to Revenue, it is earnestly requested before your goodself that no adverse inference kindly be drawn for rejecting the TDS credit relatable to deferred revenue having regard to the fact that the opening deferred revenue of Rs. 68.50 Crores has been booked as revenue in the relevant financial year and the current year's deferred revenue of Rs. 60.60 Crores has been very much booked as revenue in subsequent financial year(s). Such contention of the assessee is also supported by the decision of the Mumbai Bench of Hon'ble IT AT in the case of Toyo Engg. India Ltd. v. JCIT[2006] 5 SOT 616 (Mum.)."

5.1 Ld. AO concluded that on total deferred revenue of Rs. 60,73,52,860/- the assessee company has claimed TDS of Rs. 2,48,71,145/- and being dissatisfied observed as follows;

"I have considered the plea of the assessee company and also the decision referred in the case of M/s Toyo engineering India Ltd[5 SOT 616] and of the view that the case of M/s Toyo engineering India Ltdis totally different. In this case, the company was recognizing revenue on percentage completion method but in the instant case the company is recognizing revenue as per actual transaction made. In the case of revenue recognition there is no specific revenue that has to be credited to the books of accounts because in that situation the percentage of revenue is recognized on percentage basis for the whole transaction. Therefore in that case it is not ascertainable as to the particular transaction is recorded or not and similarly the TDS deducted can't be linked with a particular transaction. In this situation, the assessee's case is totally different as particular transaction with reference to TDS is ascertainable in the assessee's case. Therefore, the plea of the assessee on this count is considered and is hereby rejected. The case of the assessee is squarly convered by the jurictional ITAT's order in the case of M/s Sikka International Freight Services Pvt. Ltd. [ITA no. 2617/D/2008 dated 10.02.2010] wherein it was held that the deduction of tax at source does not determine the year of taxability of the receipt stated in the TDS certificate. At best if corresponding income is not taxable in a particular year, the corresponding credit for tax deducted may not be granted in view of section 199 but reverse is not true. Merely because credit was claimed for tax deducted at source, it does not mean that the corresponding income is chargeable to tax. In view of the fact of the case and finding support from the above court decision, the TDS of Rs. 2,48,71,145/- claimed during the year under consideration on the deferred revenue of Rs. 60,73,52,960/- is hereby disallowed and added to the income of the assessee within meaning of section

198 of the Act. The TDS credit of Rs. 2,48,71,145/- on deferred revenue will be allowed in the relevant assessment year in which underlying revenue has been offered to tax.

Further, the assessee has claimed additional TDS of Rs. 12,70,656/-during the course of assessment proceedings. However, assessee company had not claimed the above TDS of Rs. 12,70,656/- in the return of income. In view of the decision of the Hon'ble Supreme Court in the case of Goetze IndiaLtd. Vs CIT [284 ITR 223], the deduction could not be made without a valid revised return. Since in the instant case the return has not been revised within the meaning of section 139(5) of the I. T. Act, 1961 therefore the additional claim of TDS of the assessee company can't be accepted and is hereby rejected. Since, I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(l)(c) are being initiated separately.

5.2 Ld. CIT(A) has sustained the aforesaid with following relevant observations in para 4.4.4 and 4.4.4.11 and 4.4.4.6 and 4.4.4.10;

"4.4.4 I have carefully considered the submissions made. I have also perused the relevant provisions of the Act and the judgments rendered by various courts in this regard including the ones relied on by the appellant and adjudicate the issue as under.

4.4.4.11 I find that Section 191 states that TDS is only one of the modes of recovery of tax, and that the same does not preclude direct payment of tax by the person receiving income. The obligations cast as per the various provisions relating to TDS in Chapter XVII of the Act are for deduction of tax at source at the earlier of the two points in time, i.e., payment or credit, the latter signifying accrual. In other words, the tax deduction has to match in time the earlier of the payment (receipt) or accrual. Put differently, the deduction of tax at source does not necessarily, or is not required to, match alongside the corresponding income, recognition of which by the recipient could be either on accrual or on receipt basis. The accrual of the tax liability on income would arise only on the same being/becoming assessable. There is thus an inherent mismatch, in terms of time, between the payment of tax (per TDS) and the accrual of tax liability against the corresponding income, i.e., given the fact of admission of income as per the relevant provisions of law. It is in view of and to address this mismatch in time, so that the tax stands deducted while the corresponding income, though accrued has yet to be received or though received, as by way of an advance, is yet to accrue, that the law [per section 199 r/w ss. 190 & 191 and Rule 37BA] clarifies that the

credit for the TDS shall be available for the year for which the corresponding income is assessable.

4.4.4.6 It was clear that credit for TDS can be given only if the corresponding income is assessable for that year. In the present case, the assessee has claimed credit for TDS, but has not offered the corresponding income to tax, on the ground that the same does not pertain to the year. Since the corresponding income is held not to be assessable during the year under consideration credit for TDS relating to this income cannot be allowed this year. In this regard the following other decisions in the cases of (i) Pradeep Kumar Dhir v. ACIT 107 ITD 118 (Chd.); (iii) Tejram v ITO (2005) 93 ITD 1 (Chd.) etc may be seen.

4.4.4.10 The issue is clinched in CIT vs Sint. Pushpa Vijoy 2012] 19 taxmann.com 157 (Ker.), where the HC of Kerala, interpreting the provisions held that in view of provisions of section 199, assessee is entitled to credit of tax based on TDS certificates only in assessment year in which income from which tax is deducted is assessed to tax.

6. On behalf of the assessee it was submitted that the assessee had offered the tax income on gross basis i.e. inclusive of TDS by the customers. The deferred revenue amounting to Rs. 60,73,52,960/- representing gross income inclusive of tax have been offered for tax by the appellant in future years. It is submitted that the Ld. AO was not justified in adding the TDs Credit so disallowed to the income of the appellant. Ld. Sr. counsel has submitted that Ld. AO had failed to appreciate it was only a case of timing difference and no loss to the revenue on account of said approach followed by the appellant.

6.1 Ld. DR however supported the findings of Ld. Tax Authorities below.

7. It can be appreciated that the issue was dealt by the Co-ordinate bench in the present appeal while passing order dated 04.09.2020 and based upon the another co-ordinate bench order in the case of assessee in ITA no. 3211/Del/2017 order dated 31.12.2019 decided the issue with following relevant finding :-

"16. So, in view of the undisputed factual position explained by the assessee and following the order passed by the coordinate Bench of the Tribunal in the case of HCL Comnet Systems and Services Ltd. (supra), we are of the considered view

that the TDS credit is to be taken irrespective of the year to which it relates even when a related revenue is booked in subsequent financial year, the assessee is entitled to make claim of the entire TDS in the years of deduction. So, the assessee is entitled for credit for tax deducted at source proportionately across those years in which income is assessable to tax. Consequently, AO is directed to allow credit of TDS on proportionate basis as required under Rule 37BA (3)(ii).

So, Grounds No.2 and 2.1 are allowed.*"*

8. It appears that while passing the aforesaid order dated 04.09.2020, the bench made decisive findings for Ground no 2.1 alone, which was relief in alternative and did not take into consideration the controversy in ground no. 2, which was reopened while allowing Miscellaneous Application. Appellant's plea in ground 2, is qua additions made by Ld. AO on account of credit of tax deducted at source on deferred revenue which is challenged for the reason that it was on account of timing difference and no loss occurred to the Revenue.

9. The Bench is of considered view that there appears to be substance in the contentions of Ld. Sr. Counsel. The nature of business of assessee is such that the revenue from after sales services is recognized on year to year basis on percentage completion method. But TDS is made by the customer on the whole of upfront payment. It appears that Ld. CIT(A) has fallen in error in not appreciating the true intent of judgment of Mumbai Tribunal decision in the case of **Toyo Engineering India Ltd. vs. JCIT SR 27 reported in (2006) 5 SOT 616 (Mum),** as applicable to case of appellant, where it is held;

"12. The pith and substance of the above discussion is that it may not be possible all the time to co-relate a specific amount of TDS with a specific amount of income earned by an assessee in a particular assessment year. If at all such a nexus is required, such nexus is rather notional or conceptual, rather than specific or immediate. When the law has used the words in section 199 of the Income Tax Act that "credit shall be given to the tax deducted at source" on

production of the certificate for the assessment year for which such income is assessable; it implied that the nexus between TDS and the corresponding income element would remain rather notional/conceptual."

10. Therefore addition of disputed TDS amount to income of concerned previous year is not justified. However, the question, relevant to ground no 2, is if the deferred revenue representing gross income inclusive of TDS was at all offered for tax by the appellant in future years. Same is a question of fact which is not reflecting from the orders of ld. Tax Authorities below.

11. Thus, in regard to the ground no. 2 the issue is restored to the files of ld. AO to verify the correctness of the claim of the appellant that it had offered the deferred revenue of Rs. 60,73,52,960/- in the future years and on being satisfied that the claim of assessee is in accordance with law the disputed addition made in the income of assessee on account of credit of tax deducted at source ("TDS") on deferred revenue, shall be deleted. **Accordingly, ground no 2 and appeal is allowed for statistical purpose.**

Order pronounced in the open court on 10th May, 2023.

Sd/-	**Sd/-**
(SHAMIM YAHYA)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:-10th .05.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

AR, ITAT
New Delhi