

Statement furnished during appellate proceedings to justify diff. in Form 26AS & ITR can be admitted by CIT(A)

Summary – The Kolkata ITAT in a recent case of Lexicon Auto Ltd., (the Assessee) held that where AO made addition to assessee's income on ground that incentive remuneration was shown at lower amount than what was reflected in Form 26AS, since as per reconciliation statement said difference occurred due to invocation of penalty clause against assessee, Commissioner (Appeals) in exercise of power under section 251, was justified in admitting reconciliation statement as additional evidence and deleting impugned addition made by AO

Assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute, but had deposited same before due date of filing of return no disallowance could be made under section 43B in respect of same

Where AO made disallowance of repair expenses on ad hoc basis without pointing out any defect/error in evidence produced by assessee, same was rightly deleted by Commissioner (Appeals)

Facts

- The assessee-company was engaged in business of purchase and sale of vehicles manufactured by TML. It was also having an agreement with TML for procuring the business on hire-purchase basis as well as subsequent collection of instalments on behalf of TML.
- The assessee was entitled to one per cent incentive remuneration from TML on the basis of monthly collections made by it on behalf of said company. The assessee had shown incentive remuneration for Rs. 5,49,815 only whereas Form 26AS was reflecting the incentive remuneration of Rs. 87,01,516 only. Thus, there was difference of Rs. 81,51,702 as observed by the Assessing Officer. On question by the Assessing Officer about the aforesaid mismatch, the assessee submitted that as per the agreement with TML, there was a clause for the penalty if the party failed to pay single instalment to TML.
- According to assessee, said amount of Rs. 81.51 lakhs had been deducted by TML and, therefore, the same was not shown as income in its return. The assessee in support of its claim also field the copy of reconciliation statement between income shown by assessee *vis-à-vis* amount shown in Form 26AS.
- The Assessing Officer rejected the assessee's explanation and added amount of difference to taxable income of assessee.
- The Commissioner (Appeals) deleted the addition made by the Assessing Officer after placing reliance on the reconciliation statement furnished by assessee during appellate proceedings.

- The revenue filed instant appeal contending that the relief had been granted by the Commissioner (Appeals) on the basis of additional evidence in form of reconciliation statement which was admitted in contravention of provisions of rule 46A of the 1962 Rules.

Held

- In the instant case, difference was found by the Assessing Officer between the amount of income shown by assessee *vis-à-vis* the income shown in the Form 26AS. Thus, the amount of difference was added to the total income of assessee. However, the Commissioner (Appeals) deleted the addition made by the Assessing Officer after having reliance on the reconciliation statement furnished by assessee during appellate proceedings. Now, the grievance of revenue is that additional evidence in the form of reconciliation statement has been admitted by the Commissioner (Appeals). However, necessary clarification about the mismatch in the amount of income shown by assessee was duly supplied before the Assessing Officer as evident from the assessment order. From the finding of the Assessing Officer, it is noted that the addition was made by him on account of non-furnishing and information such as given below:
 - (i) The amount recovered the finance amount from the customer is not ascertainable.
 - (ii) The assessee also failed to furnish the party-wise details who have defaulted in the payment of instalment financed by TML.
 - (iii) No detail has been submitted by the assessee regarding the subsequent recovery from the customers.
 - (iv) There is no detail filed by the assessee with regard to the parties from whom the vehicles financed by TML were recovered.
- In view of above, it is found that no additional detail was submitted by the assessee before appellate proceedings. The assessee before the Commissioner (Appeals) submitted the reconciliation statement justifying the difference as observed by the Assessing Officer which was also filed before the Assessing Officer too during assessment proceedings. There was no details furnished with regard to subsequent recovery instalment etc. from the parties on account of non-payment instalments on the basis of which the addition was made by the Assessing Officer.
- Thus, it can be concluded that Commissioner (Appeals) has not granted relief to assessee on the basis of any additional evidence which were accepted by him in contravention to the provision of rule 46A of IT Rules, 1962. The reconciliation statement was duly filed before the Assessing Officer while framing the assessment proceeding. However, the Assessing Officer has not pointed out any defect in the reconciliation statement furnished by the assessee. The Assessing Officer was empowered to verify the amount of penalty imposed by TML on assessee by showing notice under section 133(6) but he failed to exercise the power.
- On specific query from the Bench to the revenue to refer the additional evidence admitted by the Commissioner (Appeals), revenue failed any point out any such documents. Therefore, it is held that no additional evidence had been submitted by assessee at the time of appellate proceedings as

alleged by revenue in the grounds of appeal. In the background of the above discussions, there is no infirmity in the order of Commissioner (Appeals) and, accordingly, the same is upheld.