

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.122/Bang/2020 : Asst.Year 2016-2017

Sri.Balaji Promoters No.216, 1 st Floor, 3 rd Main Jayanagar VI Block Bangalore – 560 082 PAN : ACRFS9100L	v.	The Income Tax Officer Ward 7(2)(4) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Prashanth.G.S., CA

Respondent by : Smt.R.Premi, JCIT-DR

Date of Hearing : 15.12.2020	Date of Pronouncement : 15.12.2020
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ORDER

Per B.R.Baskaran, AM :

The assessee has filed this appeal challenging the order dated 22.11.2019 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.1,56,35,302/-, being the difference in the income disclosed in the books of account and Form 26AS.

2. The assessee is a partnership firm. It is engaged in the business of providing market support services to a company named M/s Bacardi India P Ltd.

3. During the scrutiny proceedings, the AO noticed from Form 26AS that the assessee has received a sum of Rs.1,82,82,161/- as Commission and Contract receipts. However, it was seen that the assessee has disclosed a sum of RS.23,37,309/- in its return of income as Commission income. The assessee explained that the Commission amount received was Rs.26,62,513/-, which included Service tax component of Rs.3,25,204/-.

Accordingly net commission income of Rs.23,37,309/- was disclosed in the return of income. The AO accepted this explanation.

4. With regard to remaining amount of Rs.1,56,35,302/-, the assessee explained that the same represents only reimbursement of expenses incurred by the assessee on behalf of M/s Bacardi India P Ltd. Accordingly it was submitted that there was no income element in it. The AO noticed that the assessee did not furnish any details in support of this claim. The assessee also later submitted that a sum of Rs.39,36,802/- out of the above said amount, does not relate to the assessee. However, according to AO, the assessee did not furnish any reliable evidence to support the above said claim also.

5. Accordingly, the AO assessed the above said amount of Rs.1,56,35,302/- as income of the assessee.

6. Before Ld CIT(A), the assessee furnished additional evidences in the form of e-mail correspondences and debit notes in support of its claim that the impugned amount was in the nature of reimbursement of expenses only. The Ld CIT(A), however, took the view that it was only an afterthought to merely seek some credibility in support of the contentions of the assessee. Accordingly, the Ld CIT(A) refused to admit additional evidences and confirmed the addition. Aggrieved, the assessee has filed this appeal.

7. The Ld A.R submitted that the assessee could collate all details and furnish them before Ld CIT(A). He submitted that the assessee has also furnished copies of agreement entered with M/s Bacardi India P Ltd in order to show that it was incurring expenses on behalf of the above said company. He submitted that the factual aspects have not been appreciated by the Ld CIT(A) and hence he was not right in observing that the additional evidences are an afterthought of the assessee. He submitted that it is imperative to examine the additional evidences in order to appreciate factual aspects. Accordingly, he submitted that the Ld CIT(A) should have admitted additional evidences. Accordingly, he prayed that the additional evidences

be admitted by the Tribunal and the matter may be restored to the file of Ld CIT(A) for examining it afresh.

8. We heard Ld D.R and perused the record. Having regard to the submissions made and the facts surrounding the issue, we are of the view that the Ld CIT(A) should have admitted the additional evidences, since those evidences goes to the root of the issue. Since the assessee has furnished copies of agreements, debit notes, e-mail correspondences etc., having considerable number of pages, in our view, it could not be an afterthought. Accordingly, we admit the additional evidences. Since it requires examination, we restore the issue to the file of Ld CIT(A) for examining the same afresh by duly considering the additional evidences, information and explanations of the assessee. Accordingly, the order passed by Ld CIT(A) on this issue is set aside. After, hearing the assessee, the Ld CIT(A) may take appropriate decision in accordance with law.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open Court on 15-12-2020

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Bangalore; Dated : 15th December, 2020.

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bengaluru.
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore