

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 6451/MUM/2019
(Assessment Year 2014-15)

DCIT, Circle- 9(2)(2)
Room No. 665A, 6th Floor,
Ayakar Bhavan,
Churchgate,
Mumbai-400020

(Appellant)

PAN No. AAEECC5105F

M/s Connect Residuary
Pvt.Ltd.
Vs. Inizio Cardinal Gracious
Road, Chakala, Andheri(E)
Mumbai-400099

(Respondent)

CO No. 29/MUM/2020
(Assessment Year 2014-15)

M/s Connect Residuary
Pvt.Ltd.
B/103 Satellite Gazebo
Andheri Ghatkopar Link
Road,
Mumbai-400093

(Appellant)

PAN No. AAEECC5105F

DCIT, Circle- 9(2)(2)
Room No. 665A, 6th Floor,
Ayakar Bhavan,
Churchgate,
Mumbai-400020

(Respondent)

Assessee by : Shri Yogesh Thar, AR
Revenue by : Shri Manish Sareen, DR

Date of hearing: 20.06.2023
Date of pronouncement : 26.06.2023

ORDER

PER PRASHANT MAHARISHI, AM:



01. This appeal is filed by The Deputy Commissioner Of Income Tax – 9 (2) (2), Mumbai (The Learned AO) for assessment year 2014 – 15 against the appellate order passed by The Commissioner Of Income Tax (Appeals) – 20, Mumbai [the Ld CIT (A)] dated 24/7/2019 raising following grounds of appeal:-

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of ₹37,86,70,325/- without appreciating the fact that the assessee failed to prove and substantiate the mismatch appearing in 26AS not providing party-wise reconciliation of 26AS?.

2.Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of ₹ 37,86,70,325/- without appreciating the fact that it is the onus of the assessee to prove and substantiate the mismatch appearing in 26AS?"

02. Brief facts of the case shows that assessee is engaged in the business of equipment renting based on Residual management capabilities. It filed its return of income on 11/11/2014 declaring a total income of ₹ 3,71,679/- . This return was picked up for scrutiny by issue of notice. Subsequently the assessment order under section 143 (3) of the act was passed on 30/12/2016 determining total income at ₹ 373,792,940/-. Substantial addition was made on account of mismatch between the income reported under form number 26AS and income recorded in



the books of accounts. Form no 26 AS showed huge Rental income on which TDS is made and claimed as tax Credit by assessee and Assessee's financial statements did not show any rental income.

03. During course of assessment proceedings, it was found that assessee has claimed tax deduction at source of ₹ 3,409,817/- whereas AO was of the view that assessee has offered income tax which is attributable to tax deducted at source is not matching. Therefore verification was made.
04. It was found that assessee has credited sum of ₹ 25,023,767/- to profit and loss account against the income and receipts shown in form number 26AS of ₹ 388,716,533/-. This discrepancy was noted and informed to the assessee by issue of notice and assessee was asked to furnish party -wise reconciliation of TDS and respective income.
05. Assessee explained its business and stated that Assessee is engaged in the business of Residuary. Assessee is approached by the customers who wanted to use the equipments for their business on rent. Assessee enters in to master Rental Agreement. Assessee in turn finds a lender who can pay to the seller for the equipments. To the lender, assessee sales the outstanding rent receivable on discounted basis. Gross rental receivables are discounted with various lenders on no recourse basis. Customers pay then Rental to the lender. As the master



Rental agreement is with the assessee, tax is deducted on such rental income paid to financial lender but TDS is in the name of the Assessee. TDS is either reimbursed. Rental income does not constitute income of the assessee. Therefore assessee has offered correct income. The learned assessing officer disbelieved explanation of assessee and found that receipt stated in form number 26AS and income shown in the profit and loss account has wide variances and therefore he made an addition of ₹ 37,86,70,325/-.

06. Assessee aggrieved with that addition preferred an appeal before the learned CIT - A. Assessee explained the business that it is engaged in the business of acquiring and dealing in the guarantee residuary interest in assets rented to the customers. According to the agreement with the customers Master Rental Agreement is entered into. According to that the assets are rented out to the customer for a mutually agreed contract. The agreement only comes in to effect if and when the assessee finds a funding agency that is willing to accept the rentals for the contract term from assessee by way of assignment. The funding agencies in this case would be a bank, and nonbanking financial Institute etc. The assignment of the rental is documented by a deed of assignment which is entered between assessee and the funding agency at the inception of the transaction on a non-recourse basis. On the assignment of the rental a deed of assignment is entered in to, fund pays assessee the discounted value of



the rent receivable. The amount so received from the fund is applied towards purchase of assets. The difference between the amount received from the funding agency and the cost of asset is recognized as packaging income in case the amount received from the fund is higher than the cost of asset and while in case of amount received from the fund is lower than the cost of asset the same is treated as investment in unwarranted residual and classified under the head non-current assets in books of account. It was further stated that the practice of accounting the rental income in the books of account is accepted by the assessing officer in earlier years as well as in subsequent assessment years by passing order under section 143 (3) of the act. For this year only this adjustment/addition/disallowance is made. The learned CIT – A after understanding the business of the assessee and consequent accounting entries passed held that the method followed by the appellant is capable of yielding correct profit over a period of time and followed consistently and moreover the revenue has accepted the residual method for assessment year 2015 – 16 and 2016 – 17 in the assessment order passed under section 143 (3) of the act for those years, the addition deserves to be deleted, accordingly the addition is deleted and therefore the learned assessing officer is aggrieved and is in appeal before us.

07. The learned departmental representative supported the order of the learned AO.



08. The learned authorized representative first explained in detail through a diagrammatic presentation business model of the assessee and respective accounting entries to be passed. He explained the business of the assessee stating that in past assessment years and subsequent assessment years the accounting of the assessee was accepted by revenue. It is disturbed in this assessment year only. He explained the business of the company, its revenue stream, its transaction trail and accounting impact. E categorically submitted that assessee is not in the business of renting of equipments but in the business of Residuary. He also referred to the annual accounts of the assessee and submitted that income shown by assessee is accepted correctly. He supported the appellate order.
09. We have carefully considered the rival contentions and perused the orders of the lower authorities. To reach at a conclusion, whether the assessee has offered correct income or not, it is necessary to understand business model of the assessee. Any customer who would like to have certain equipments will contact the assessee for purchase of those assets. Based on the requirement, lease of assets is entered into between Customer and assessee by a Master Rental Agreement fixing rental schedules. Assessee solicits the financier who can finance the purchase of the assets to be rented out. Such financier subsequently pays to the assessee and in turn assessee assigns the lease rentals receivable from the customer to



the financier. From the financier, assessee receives discounted value of lease rentals. Based on this, assessee pays purchase price to the vendor from whom the equipments/assets are purchased. Customer directly makes payment of lease rentals to the Financier because the lease rentals receivable by the assessee are already assigned to the financier. Naturally when lease rents are paid, tax is required to be deducted by the customer. If lease rent is paid after deducting tax at source, assessee is supposed to reimburse to the extent of tax deduction at source to the financier. The customer issues tax deduction at source certificate in the name of the assessee because master rent agreement was between assessee and the customer. On completion of the tenure of the lease, assets are returned. Those assets are sold at the end of the tenure to the respective purchaser of those assets. The assessee offers investment in unguaranteed residuary account upfront. Therefore naturally, the income of the assessee is not the rental income but the income earned in the business of acquiring and dealing in unguaranteed residuary interest in assets rented to the customers. Thus, the income offered by the assessee is such income and not the rental income appearing in form number 26AS. This AY is the only year in which LD AO has taken such a view and made addition. On Similar facts in earlier years and subsequent years, the LD AO has not made such addition. Perhaps for this year the addition has been made on account of failure on the part of him to understand the business model of the assessee. Therefore, we confirm



the order of the LD CIT (A) deleting the addition for this year. In view of this the Appeal of the LD AO is dismissed.

010. Co no 29/M/2020 filed by the assessee is on alternative grounds. In view of our decision in Appeal of the LD AO, CO becomes infructuous and hence dismissed.

011. In the result appeal of the Id AO and CO of The Assessee are dismissed.

Order pronounced in the open court on 26.06.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.06.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai