

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.140/Mum./2022
(Assessment Year : 2013-14)

Damco India Pvt. Ltd.
Unit no.401 & 402, Godrej Two
Pirojshanagar, Eastern Express Highway
Vikhroli (East), Mumbai 400 079
PAN – AAHCA6078Q

..... Appellant

v/s

Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre
Delhi

..... Respondent

Assessee by : Shri Manish Kanth
Revenue by : Smt. Mahita Nair

Date of Hearing – 08/08/2023

Date of Order – 10/08/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/11/2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2013-14.

2. In its appeal, the assessee has raised the following grounds:-

"Based on the facts and circumstances of the case, the Appellant respectfully craves leave to prefer an appeal under section 253(1) of the Income-tax Act,

1961 ('the Act') against the order passed under section 250 of the Act by the National Faceless Appeal Centre (NFAC) on the following grounds, which are independent and without prejudice to each other:

1. On the facts and circumstances of the case and in law, the NFAC erred in upholding the order passed by the learned Assessing Officer (AO) denying legitimate credit of advance tax paid amounting to INR 1,10,00,000 which was otherwise allowable and could not be claimed in the return of income.

2. On the facts and circumstances of the case and in law, the NFAC erred in upholding the order passed by the learned AO wherein the learned AO failed to discharge his duties as per Circular 14 (XL-35) dated 11 April 1955 issued by the Central Board of Direct Taxes ('CBDT) to assist the tax payer, particularly in the matter of claiming and securing reliefs and taking the initiative in guiding the taxpayer where proceedings before them indicate that the refund or relief is due to him.

3. On the facts and circumstances of the case and in law, the NFAC erred in upholding the order passed by the learned AO where in the AO erred by not following the judgment of jurisdictional Bombay High Court in case of *Sitaldas K. Motwani vs. DCIT (International Taxation)*, 2010 187 taxman 44 (Bombay) and *Pruthvi Brokers and Shareholders* 2012 23 taxmann.com 23 (Bombay).

4. On the facts and circumstances of the case and in law, the NFAC erred in upholding the order passed by the learned AO where in the AO erred in disregarding the fact that Form 26AS already formed part of the records of the Income-tax department, and the credit for taxes paid which was appearing in Form 26AS was not granted to the Appellant.

5. The Appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law.

(1) The tax effect arising on account of grounds 1 to 3 has not been quantified since the grounds relate to a single issue and INR. 1,10,00,000 is entirely a credit for legitimate advance tax paid by the Appellant that needs to be granted in totality."

3. The only dispute raised by the assessee, in the present appeal, is pertaining to the denial of credit of advance tax amounting to Rs. 1,10,00,000 paid by the assessee.

4. The brief facts of the case are that the assessee is engaged in the business of providing freight forwarding and supply chain management services to global customers of DAMCO Group. For the year under consideration, the assessee filed its return of income on 30/11/2013 declaring

a total income of Rs. 18,58,74,940. The return filed by the assessee was selected for scrutiny and vide order dated 28/04/2017 the total income of the assessee was assessed at Rs. 38,23,56,290. In appellate proceedings, the Tribunal granted partial relief to the assessee. Upon receipt of the order giving effect to the Tribunal's direction, the assessee noticed that the credit for advance tax amounting to Rs. 1,10,00,000 paid was not claimed in the return of income. As the due date for filing the revised return of income had expired, the assessee approached the Assessing Officer ("AO") by filing the rectification application under section 154 of the Act. Vide order dated 12/08/2020, the AO rejected the claim of the assessee for grant of credit of advance tax paid on the basis that the claim of the assessee is made after a lapse of almost 3 years after completion of the assessment. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on the basis that there is no mistake apparent from the record in the order passed by the AO giving effect to the order of the Tribunal, and thus the order of the AO cannot be interfered with under section 154 of the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee has filed an application before CBDT under section 119(2)(b) of the Act for condonation of delay in claiming the advance tax credit, which is pending consideration. The learned AR also placed on record a copy of the challan payments of advance tax amounting to Rs. 1,10,00,000 as well as relevant extracts of Form 26AS wherein the aforesaid payment is duly reflected.

6. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and submitted that this claim was neither made in the return of income nor any revised return of income was filed by the assessee and therefore the claim has been correctly rejected.

7. We have considered the submissions of both sides and perused the material available on record. From the perusal of the challan of payment of advance tax, we find that an advance tax of Rs. 44 lakh was paid by the assessee on 14/06/2012, and an advance tax of Rs. 66 lakh was paid by the assessee on 13/09/2012. We find that the aforesaid payments are duly reflected in the relevant extracts of Form 26AS furnished by the assessee. It cannot be disputed that the claim made by the assessee was limited to the grant of credit of the aforesaid advance tax paid during the year under consideration and the same doesn't pertain to fresh claim of any allowance/deduction. It is not a case wherein the assessee sought credit of TDS which needs to be verified with documentation and correlated with the corresponding income. Further, section 219 of the Act also mandates that the credit of advance tax shall be given to the assessee in the regular assessment. Thus, the inadvertence on the part of the assessee to claim the credit for the advance tax while filing its return of income or filing the revised return of income in this regard does not absolve the AO from its statutory duty as per section 219 of the Act to grant the credit in the regular assessment, particularly when the said amount is duly reflected in Form 26AS which forms part of the record of the Revenue. Therefore, we are of the considered view that the AO erred in not rectifying this apparent mistake when the same was

pointed out by the assessee vide its application under section 154 of the Act. Accordingly, we direct the jurisdictional AO to grant the credit of advance tax of Rs. 1,10,00,000 paid by the assessee during the financial year 2012-13. As a result, the impugned order passed by the learned CIT(A) is set aside and the grounds raised by the assessee are allowed.

8. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 10/08/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 10/08/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai