

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
&**

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No.790/Mum/2018
(Assessment Year :2014-15)**

M/s. S.M. Aker Management Services Private Limited 1105, O2 Business Corporate Plaza 11 th Floor, A Wing, Minerva Industrial Estate Mulund (W), Mumbai – 400 080	Vs.	M/s. ITO-15(3)-4 Aayakar Bhavan Mumbai
PAN/GIR No. AAMCS8388Q		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri. T.S. Khalsa
Date of Hearing	28/07/2021
Date of Pronouncement	28/07/2021

आदेश / O R D E R

PER SHRI SHAMIM YAHYA AM

This appeal by the assessee is directed against order of Ld. CIT(A) dated 12/09/2017 and pertains to Assessment Year 2014-15.

2. The assessee has filed the following grounds of appeal:-

“Under the facts and circumstances of the case,

The Learned Commissioner of Income-tax (Appeals) erred in passing the appellate order without giving a opportunity of being heard to the appellant.

The Learned Commissioner of Income-tax (Appeals) erred in confirming the addition made by AO of Rs. 12,50,251/- solely on the grounds that the appellant has claimed the full credit of TDS on these excess amount reflected in 26AS and without appreciating the fact that the appellant has neither raised any invoice / received these excess amounts.

3. The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

3. The brief facts on this issue are that impugned addition was made by the Id.Assessing Officer on the ground that there was difference between income shown as per Form 26AS and income shown as per profit and loss account. The assessee gave the explanation thereof. This was duly noted by the Id.Assessing Officer in his assessment order as under:-

Sr. No.	Name of the Party	Amount as per Form 26AS	Amount as per P&LA/c	Diff	Reasons for difference if any
1.	Indian Oil Corporation Ltd. (SHD-Baroda)	41,51,991	29,34,470	12,17,521	1] Rs. 4,56,733 amount of Service Tax consider as income in 26AS (2) Rs. 143035 sales amount not consider in 26AS but we consider in P&L (Total diff is Rs. 456733 - 143035 - 313698)
2.	UEM India Pvt. Ltd.	17,48,846	11,20,846	6,28,000	1) Rs. 138537 amount of service tax consider as income in 26AS 2) 489463 sales amount not consider in but not in P&L A/c. (total diff is Rs. 489463- -138537 = 628000]
	Total			18,45,521	

3.1. However, the Id. AO held as under:-

“On perusal of the above chart it can be seen that at Sr. 1 of the above table the difference of income as per P&L and 26AS is Rs. 12,17,521/-. As per the above statement Rs. 4,56,733/- being service tax has been included in 26AS. Hence, the difference of Rs. 7,60,788/- (12,17,521- 4,56,733). Further, at Sr.2 of the above table the difference of income as per P&L and 26AS is Rs. 6,28,000/-. As per the above statement Rs. 1,38,537/- being service tax has been included in 26AS. Hence, the difference of Rs. 4,89,463/- (628000 - 138537). As per the accounting method followed by the assessee company i.e. mercantile system, this income ought to have

been shown as income for the year under consideration. Therefore, an amount of Rs. 12,50,251/- (760788 + 489463) is considered as income for the year under consideration and added to the total income of the assessee.

3.2. On appeal, the Id. CIT(A) has confirmed the Id. AO's order by observing as under:-

Ground No.2 & 3 raised in respect of the addition of Rs. 12,50,251/- made on account of difference in 26AS. The Ld AO has during the course of scrutiny assessment proceedings called for the reconciliation of the difference in receipts as per the 26AS with that of the Profit & Loss account. The appellant could not properly reconcile and justified the action. The submissions as per the statement of facts have been considered in the light of the facts of the case on record. It is factually true that the appellant has less admitted its receipts. However it has claimed and availed full credit of TDS as per 26AS. The Id AO has rightly brought to tax the total receipts. The action of the Id AO is therefore said to have been made on sound footing and after due verification and application of mind. Hence I do not find any inconsistency and the findings of the Id AO are therefore confirmed. This ground is dismissed.

3.3. Against the said order, assessee is in appeal before us.

4. We have heard the Id. DR and perused the record. None appeared on behalf of assessee despite notice. We note that assessee has duly explained to the Id. Assessing Officer that the reason of impugned difference was partly relating to service tax which has been accepted by the Id. Assessing Officer. However, the explanation of sales which has been considered differently in 26AS and profit and loss account has not been accepted by the Id. Assessing Officer. We note that no reason has been given by the Id. Assessing Officer as to why he is not accepting them. No case is made out that from the examination of records, the explanation has been found to be incorrect. Without giving any reason, the rejection of the explanation thereof is not sustainable. Hence, we direct that addition should be restricted to the difference as accepted by

the assessee in its explanation that Rs.3,13,698 + 6,28,000/-. We direct accordingly.

5. In the result, appeal of the assessee stands partly allowed.

Order pronounced on 28/07/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/07/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai