



Newsflash:
Jaipur Tribunal Rules that Mere reflection of higher income in Form 26AS not a reason to make additions to the returned income offered by the assessee



Newsflash

Jaipur Tribunal Rules that Mere reflection of higher income in Form 26AS not a reason to make additions to the returned income offered by the assessee

*For Circulation
17 May 2022*

1.0 BACKGROUND

- 1.1 Recently, the Hon'ble Income-tax Appellate Tribunal ('ITAT') bench - Jaipur in the case of ***M/s Shri Jeen Mata Buildcon Pvt. Ltd ("the Petitioner") vs. the ITO*** has passed a verdict on 8 March 2022 in favour of the assessee and deleted the addition made based on mere reflection of higher income in Form 26AS of the assessee.
- 1.2 In this case, the Hon'ble ITAT has held that mere reliance on the income in Form 26AS (reflected on higher side than income as per books) cannot be a reason to make additions to the returned income offered by the assessee where income is recognized based on accounting standard followed by the assessee and adequate reconciliation / explanation of differences in income as per books vis-à-vis Form 26AS duly submitted by the assessee during the course of assessment proceedings.

2.0 FACTS OF THE CASE

- 2.1 The Petitioner company is engaged in the business of labour contractor supplier with machinery under affordable housing policy for the relevant year under consideration (Assessment year 2013-14).
- 2.2 The Petitioner had filed its return of income within the time limits prescribed under the provisions of Income-tax Act, 1961 ('the Act') and the same was processed under section 143(1) of the Act. Further, the Petitioner's case was selected for scrutiny by the tax authorities through Computer Assisted Scrutiny Selection (CASS) due to difference in turnover between 26AS and books of account.
- 2.3 The Assessing Officer ('Ld. AO') observed the difference in turnover as per books vis-à-vis Form 26AS and by placing reliance on receipts reflecting in Form 26AS added the differential amount of receipt to the income offered by the Petitioner. The said addition was also supported by enquiry of the payer party under section 133(6) of the Act where the Ld. AO has observed difference in the income booked by the Petitioner vis-à-vis expenses booked by the payer.

2.4 The observations of the appellate authorities on the above issue have been explained in the following paragraphs-

3.0 OBSERVATIONS OF APPELLATE AUTHORITIES

(A) COMMISSIONER OF INCOME-TAX (APPEALS)

3.1 The Ld. CIT(A) observed that the addition made by the Ld. AO in the assessment order is after verification of information as per Form 26AS of the Petitioner and results of enquiry conducted in case of the Payer party under section 133(6) of the Act. As such, the addition made by the Ld. AO was duly confirmed by Ld. CIT(A).

3.2 Aggrieved by the above, the Petitioner had preferred appeal before Hon'ble ITAT. The observations of Hon'ble ITAT are as under: -

(B) INCOME-TAX APPELLATE TRIBUNAL

3.3 The main contentions of the Petitioner are summarized as under-

- Accounts not rejected by the AO - Books of accounts properly maintained and duly audited under section 44AB of the Act
- Complete books of accounts along with purchase bills, contract receipts bills, vouchers and other registers maintained by the assessee were produced before the AO in the course of assessment proceedings
- The assessee consistently has not been showing Closing WIP since earlier years
- The impugned additions are made merely and blindly relying upon the receipts as shown in Form 26AS, which were higher than the contract receipts shown by the assessee in its books.
- The law is well settled that if accounts are not rejected under section 145(3) of the Act, no upward estimation of income is legally possible.
- The other party has booked the expenses - that cannot be the reason while making the assessment in the case of the assessee, when the contract receipt got reflected in the subsequent year as per regular method of accounting followed.
- **It is only elementary that information as per data base of the Revenue authorities cannot be, by itself, a legally sustainable basis for making addition to the income of the assessee and that such imports are based starting point for appropriate inquiry which in this case made and explained by the assessee & reconciliation to that want also made. There is nothing more than this information input which has been put against the assessee.**

3.4 **Ruling of the Hon'ble ITAT:**

The Hon'ble ITAT after considering the contentions of both the parties ruled that, mere reliance on the income in Form 26AS (reflected on higher side than income as per books) cannot be a

reason to make additions to the returned income offered by the assessee where income is recognized based on accounting standard followed by the assessee, reconciliation / explanation of differences in income as per books vis-à-vis Form 26AS has been duly submitted by the assessee during the course of assessment proceedings and recognition of income is only a timing difference. The relevant extract of the ruling is reproduced as under:

“..... We have noted that the audited books of accounts and reconciliation and the various entities contract amount offered for tax over a period & time. Only difference between the contract value of each party matches over a period of time irrespective of the year offered by the assessee and therefore, grievance of the Revenue that the assessee has not offered correct income is fully explained by the assessee by filing the chart at page No. 5 of the assessee’s written submissions.....

The income offered for both the parties, in respect of which the addition made almost reconciled and offered for in the regular books, AO has not rejected the book results. Therefore, it is not required to disturb the books result which has been audited by an independent auditor.”

3.5	In view of the above, the Hon’ble ITAT bench, Jaipur has decided the case in favour of the Petitioner and the impugned addition based on difference in Form 26AS vis-à-vis books of accounts was deleted.
-----	--

Note: The said case also involved grounds relating to lumpsum disallowance of expenses and levy of interest under the Income-tax provisions, however, the said grounds, being separate issues, are not discussed in this newsflash.

4.0 OUR COMMENTS

4.1 The difference between income recognised in books of accounts and the receipts reflected in Form 26AS is commonly prevalent and is particularly resulting from the difference of accounting treatment of expense by the payer and income by the recipient. It is generally observed that expenses are booked on provisional basis where there is reasonable certainty of incurrence, whereas the income is recognised as per contractual terms. Further, in cases where there is advance payment, due to applicability of TDS on advance, there is further difference between receipts reflected in Form 26AS vis-à-vis income recognised in books of accounts.

4.2 Having said the above, it is advisable for an assessee to prepare and maintain appropriate reconciliation of income recognised in books of accounts vis-à-vis receipts reflected in Form 26AS at the time of filing of return of income. The said reconciliation serves the following purpose –

a) Recognition of correct income in the books of accounts in case any items or entries of income has been missed by the assessee.

- b) Correct claim of TDS credit in the return of income – As per the provisions under the Act, it is advisable that TDS credit is claimed only in the year where corresponding income is offered to tax. As such, in case there is any income which is recognised in subsequent year due to revenue recognition principle, the corresponding TDS credit should be carried forward to subsequent year. Notably, even the ITR form allows carry forward of TDS credit.
- c) In case, the assessee observes any discrepancy where income or TDS is excess / short reported by the payer, the same can be immediately communicated to the payer so that the TDS returns can be revised and Form 26AS can be consequently updated.
- 4.3 With the increased thrust of tax authorities on information received through Form 26AS, Annual Information Statement (AIS) and Tax Information Summary (TIS) coupled with the faceless assessment scheme wherein the assessment is conducted in a virtual manner with limited time available for the submission of details, it becomes more imperative for the assessee to maintain the aforesaid reconciliation for explanation of any difference in income.
- 4.4 The above judgement is a most welcome judgement wherein it can be observed that the Appellate authorities are considering substance over form in deciding a case wherein less emphasis is given to the information/ data available with the tax authorities and more emphasis is given to the substance of the transaction. Notably, in the facts of the case, the petitioner was able to provide explanation for the difference of income in the books vis-vis Form 26AS.
- 4.5 As such, it is now clarified that mere reflection of higher turnover in Form 26AS than as per books of accounts, particularly when income is recognised based on accounting principles, cannot be a reason to make additions to the returned income offered by the assessee wherein adequate explanation/ clarifications are available to substantiate differences in receipts and which have been offered to tax over a period of time. The same is also supported by:
- **ITO v. M/s Star Consortium [Income Tax Appeal No. 04/KOL/2020 C.O. No. 08/Kol/2020, dated 7 April 2021]**
 - **Mercury Car Rentals Pvt. Ltd. Vs DCIT (ITAT Kolkata) [I.T.A. No. 1442/Kol/2018 dated 10 April 2019]**
- 4.6 The aforesaid ruling would be helpful in case of taxpayers who are engaged in the business of provision of goods/ performance of services under contractual obligations wherein there might be timing difference between recognition of revenue by recipient and corresponding recognition of expense by the payer. It may also be relevant in cases where advance payment is received for goods / services supplied by the assessee.

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

8th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555/ 6121 4444

F: (91-22) 6108 5556/ 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham, and Jaipur.



facebook.com/RSMInIndia



twitter.com/RSM_India



linkedin.com/company/rsm-india



Youtube.com/c/RSMIndia

RSM Astute Consulting Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ .

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et sec of the Civil Code of Switzerland whose seat is in Zug.

This Newsflash provides an overview on the Jaipur Tribunal which ruled that mere reflection of higher income in Form 26AS not a reason to make additions to the returned income offered by the assessee. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

17 May 2022

© RSM International Association, 2022