

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

BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A. No.5863/Mum/2013
(Assessment Year 2009-10)

Shri Bhavin Jayantilal Shah 11, Jay Mahal, Plot No.57 Oza Road, Jain Society, Sion (W) Mumbai 22	vs	Income Tax Officer 13(2)(2), Mumbai
PAN No. AACPS6410N		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Suman Kumar

Date of hearing : 28-02-2017
Date of pronouncement : 28-02-2017

ORDER

Per Ashwani Taneja, AM :-

This appeal has been filed by the assessee against the order passed by the Commissioner of Income-tax (Appeals)-24, Mumbai [hereinafter called CIT(A)] dated 28-06-2013 passed against the order u/s 143(3) r.w.s 145(3) / 144 of the Act dated 26/12/2011 for AY. 2009-10 on the following grounds:-

"1. On the facts and in the circumstances of the case / the learned C.I.T.(A) was erred in confirming the G. P. rate @ 5.04% as adopted by Assessing Officer without considering the facts that compared cases are large transport operators having many trucks with them and godowns and it be deleted.

2)"On the facts and in the circumstances of the case / the learned C.I.T.(A) was erred in confirming the G. P. rate @ 5,04% as adopted by Assessing Officer without considering the facts that compared cases are large transport operators having many trucks with them and godowns and it be deleted.

The appellant prays that the G. P. rate declared by the appellant be accepted.

3) The Appellant craves leave to add, alter and delete and/or modify all or any of the grounds of appeal at any time as and when the occasion demands."

2. In this case, the solitary issue involved is about estimation of income. The assessee firm during the year was engaged in the business of transportation of goods as claimed in the return of income filed. The assessee showed gross turnover of transport charges of Rs.4.56 crores showing gross profit @2.31%. During the course of assessment proceedings it was noted by the AO that the assessee has not done any actual business but has merely carried out job of issuing bogus bills. The AO, therefore, rejected the books of account and estimated the gross profit at 5.04%. In appeal before Ld.CIT(A) it was admitted by the assessee that the assessee had issued transport bills without doing actual business. Ld.CIT(A) did not accept the submissions of the assessee and rejected the submissions of the assessee and confirmed made by the AO by observing as under:-

"I have considered the facts of the case and submissions made by the assessee. It is seen from the record, the assessee during the previous year relevant to assessment year 2009-10 has declared the receipts from transport and material. Out of this Rs. 4,55,74,835/- as admitted by the assessee was received for providing only bills not the services, The assessee,

it was claimed admitted G.P. @ 2.31% on these transport bills. The Assessing Officer having regard to the entries made in the books of account rejected the books of account and compared few cases and estimated the profit @5.04% taking average of the comparable cases.

The assessee objecting to the estimation made by the Assessing Officer submitted that the estimation made by the Assessing Officer was not correct as the assessee was not carrying on any real business in the transportation but she issued only bills and on such transactions she received commission of 1% plus TDS.

At the outset, it is to be stated that the assessee has redefined the meaning of business. The assessee admitted without hesitation or fear that she was only issuing the bills. The Assessing Officer having considered the admission made by the assessee, rejected the books of account and estimated Net Profit @ 5.04%. The decision of the Assessing Officer estimating @ 5.04% is very reasonable and fair given the facts of the case. The Assessing Officer in fact should have estimated the profit at higher level, which would have driven home the point that this type of dubious transactions/"business" activities cannot be encouraged, as the same is not authorized/mandated either by laws of State Governments or Central Acts. The assessee should have at/least thought about the loss of revenue caused by her customers by claiming bogus expenditure by them in their books of account. Thus, the assessee not only suppressed her own income, but also abetted the others to defraud the revenue.

The assessee, for this year, on this issue has also given modus operandi i.e. receipt of cheque, depositing in the bank account, withdrawing the cash and after deduction of 1% commission handing over the cash to the receiver of the bills. However, it is not known, how much was retained and how much amount was handed over, as entire transactions run in cash. Further, it can't be limited to 1% of the bills issued, as the customers of the assessee is getting 100% deduction. It cannot be ascertained, the percentage of commission paid until these parties are verified, investigated by investigating authorities. In these circumstances, the Assessing Officer's action is justified, as he has taken right method to compare profit declared by some cases and applied the profit figures to the assessee's case. The assessee has also not submitted any corroborative evidence to prove that only 1% commission received from these transactions. For this to prove, the assessee should have got confirmations along with the production of parties that they paid only 1% of commission on these dubious and dishonest transactions. This the assessee failed to do. Therefore, I do not incline to interfere with the estimation made by the Assessing Officer and same is upheld. The ground of appeal of the assessee is dismissed."

3. During the course of hearing before us, none appeared on behalf of the assessee. The Ld.DR relied upon the orders of the lower authorities and submitted that fair estimation has been done, therefore, no interference is called for.

4. We have gone through the orders passed by the lower authorities. It is found that findings recorded by the Ld.CIT(A)

are based upon the facts of this case and nothing has been brought before us to negate his findings. Therefore, no interference is called for in the order of the Ld.CIT(A) and the same is upheld.

5. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the court at the time of conclusion of hearing.

Sd/-

sd/-

(MAHAVIR SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28th February, 2017

Copy to :

1. The applicant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, L-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES