

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1346/CHD/2012**  
Assessment Year : 2009-10

Mr Rajinder Pal Singh, C/o M/s Khanna Gujrat Roadways, Village Bhatian, G.T. Road, Khanna-141401	Vs.	The ITO, Ward-III, Aaykar Bhawan, Khanna
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PAN No. AVVPS9985P

(Appellant)

(Respondent)

Appellant by	:	Sh. Parikshit Aggarwal, CA
Respondent by	:	Sh. Manjit Singh, Sr DR

Date of Hearing	:	09.05.2018
Date of Pronouncement	:	09.05.2018

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 25.10.2012 of the Commissioner of Income Tax (Appeals)-II, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The assessee through its grounds of appeal has agitated the estimation of GP rate @ 20% and further disallowance made by the Assessing officer u/s 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act').

3. At the outset, the Ld. Counsel for the assessee has submitted that the assessee is involved in the business of transportation of

goods. However, the assessee does not possess any truck / vehicle. The assessee, in fact, is a commission agent as the customers / consignees / consignors book the trucks through assessee which work is further outsourced to the truck owners. The consignee / consignors while making payment deduct TDS in the name of the assessee because the trucks are hired in the name / through the assessee. The assessee returned his income for the year under consideration at Rs. 1,85,300/- under the head 'business or profession'. The Assessing officer, however, from the TDS certificates noted that the turnover of the assessee for the year under consideration was at about Rs. 75 lacs. He, therefore, estimated the income of the assessee from the aforesaid turn over @ 20% of the gross receipts. The Assessing officer further noted that though, the customers while making payments to the assessee had deducted TDS for which the assessee had availed refund, however, since the assessee had sub-contracted the work to the truck owners, hence, the assessee was required to deduct TDS on the payments made to the truck owners. He, therefore, made a disallowance of Rs. 8,47,618/- and Rs. 23,97,226/- (total Rs. 32,44,844/- ) u/s 40(a)(ia) of the Act.

4. The assessee challenged the aforesaid additions made by the Assessing officer before the CIT(A), however, remained unsuccessful.

5. Before us, Ld. Counsel for the assessee has submitted that though the trucks were booked through the assessee, however, the assessee acted just as a commission agent. On the submissions of the

assessee, this Tribunal vide order dated 12.07.2016 directed the Assessing officer to give report in respect of the above submissions of the assessee after going through the accounts of the assessee. The Ld. Assessing officer in her report dated 27.7.2016 has reported as under:-

*“F.No. ITO/w-3/Khanna/2016-17/684 dated 27.07.2016*

*The Addl. Commissioner of Income Tax (DR),  
O/o Commissioner of Income Tax (DR)(ITAT,)  
Aayakar Bhawan, Sector 17-E, Chandigarh  
Sir,*

*Sub:- Appeal in the case of Sh. Rajidner Pal  
Singh, Khanna – PAN No. AYVPS09985P in  
ITA No. 136/Chd/2012 – assessment year  
2009-10 – Regarding*

*Kindly refer to your letter F.No. CIT  
(DR)/ITAT/Chd/2016-17/297 dated 16.6.2016 vide which  
you have directed to appeal before the Hon'ble Bench on  
12.7.2016.*

*2. In this regard, it is submitted that as directed by  
the Hon'ble Bench, the date of herring, the requisite  
report of accounting of TDS deducted on Freight  
payments in the above noted case is submitted asunder:-*

*2.1 The books of account alongwith relevant documents  
have been produced by the Shri Hukminder Sahi, CA  
counsel for the assessee and have been test-checked. The  
assessee's counsel has also furnmished copies of the  
ledger accounts of 'Freight & Octroi Patel (Modern Steel  
Ltd), "freight & Octroi Payable (Others), 26AS statement  
and 'TDS account' which were eto produced at the time  
of assessment.*

*2.2 On perusal of these accounts, it is found that the  
assessee is doing business of transport booking agent.  
The assessee had booked trucks and issued bills / GRs  
showing truck number in the name of M/s Modern Steel  
Ltd and other parties mentioned in 26AS Statement. These  
parties had deducted TDS of the assessee at the time of*

*payment on the basis of bills / GRs issued. After receiving the payment of freight from the dedicators, the assessee had made payments in cash to the truck owners as per the amounts mentioned against the said bills / GRs issued to the assessee. The assessee has not maintained any ledger accounts of these truck owners in his books of account. He had only maintained 'Freight & Octroi payable' account and 'Commission Account' in his books of account and booked commission @ 200/- per truck. However, on receipt of these payments from the deductors through cheques, the assessee had returned this freight amount to the truck owners as per bills / GRs and claimed TDS in his ITR for assessment year 2009-10. It is pertinent to mention here that all the payments of freight made to truck owners was below Rs. 20,000/- each and in cash mode only.*

*2.3 It is further submitted that the assessee has not entered any receipts of freight payments on which tax deducted made by the deductor and also not claimed any expenditure out of these receipts.*

*Submitted of kind perusal, Sir,*

*Yours faithfully,*

*Sd/-*

*(Kiran Bala)*

*ITO, Ward-3, Khanna”*

6. The Ld. Counsel for the assessee while relying upon the report of the Assessing officer has submitted that the assessee was not operating as an independent contractor but just as a booking agent. Whatever the amount of freight was received, the assessee got just a commission of Rs. 200 per truck. The Ld. counsel, therefore, has submitted that the Assessing officer has erred in estimating the GP rate on the basis of TDS certificates and further to invoke the provisions of section 194C of the Act and holding the assessee as an independent contractor and thereby making disallowance u/s 40(a)(ia) of the Act that too on assumption basis.

7. The Ld. DR, on the other hand, has relied on the findings of the lower authorities.

8. We have heard the rival submission. In the peculiar facts and circumstances of this case, in our view, the assessee would not be termed as an 'independent contractor' though the payments were made by the respective consignee / consigner in the name of the assessee which were further paid by the assessee to the respective truck owners. However, the element of profit making by operating individually as a contractor was missing in these transactions. The assessee was getting only commission at fixed rate. The operation of the assessee was in such a manner that neither the assessee had got chance to earn more / variable profits out of Contract or the freight received except the fixed commission income of Rs. 200/- per truck, nor the assessee bore any risk of loss out of the transactions booked. In the circumstances, the assessee acted just as a commission agent. In view of the report of the Assessing officer, the assessee used to Rs. 200/- per truck as commission per booking. Considering the peculiar facts and circumstances of the case and also in view of the report of the Assessing officer, we do not find any justification on the part of the lower authorities in estimating the gross profits of the assessee on the basis of TDS certificates and further making disallowance u/s 40(a)(ia) of the Act, Since, the Assessing officer in her report has stated that the assessee only received commission of Rs. 200 per truck, hence, there was no justification for estimating the profit of the assessee on basis of gross receipts which, in fact, were further paid by the assessee to the truck owners.

9. Considering the overall facts and circumstances, we do not find any justification on the part of the lower authorities in making the impugned additions and the same are accordingly hereby set aside. However, before parting with the order, we clarify that our above observations made in this case are on the peculiar facts and circumstances of this very case and these will neither operate as a judicial precedent nor should be taken as laying down any proposition of law.

Order pronounced in the Open Court.

Sd/-

Sd/-

**(B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**  
Dated : 09.05.2018  
Rkk

**(SANJAY GARG)**  
**JUDICIAL MEMBER**

*Copy to:*

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*