

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.251/Ind/2017
Assessment Year: 2008-09**

Shri Parth Sarthi Naidu, Prop. Kamakshi Transport Comp. C/o. B. Bansal & Co. E-2, Ratlam	बनाम/ Vs.	ITO 2(4) Indore
(Revenue)		(Respondent)
P.A. No.AAOPN4854B		

**ITA No.256/Ind/2017
Assessment Year: 2008-09**

ITO 2(4) Indore	बनाम/ Vs.	Shri Parth Sarthi Naidu, Prop. Kamakshi Transport Comp. C/o. B. Bansal & Co. E-2, Ratlam
(Revenue)		(Respondent)
P.A. No. AAOPN4854B		

Appellant by	Shri Atik Bansal CA
Revenue by	Shri K. G. Goyal Sr. DR
Date of Hearing:	18.07.2018
Date of Pronouncement:	26.07.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

These cross appeals filed by the Assessee and by the Revenue are directed against the order of CIT(A)-I, Indore dated 06/12/2016 pertaining to assessment year 2008-09.

2. At the outset the Ld. Counsel for the assessee submitted that the Revenue's appeal is not maintainable. In view of the tax effect being lower than the prescribed limit he has also filed income tax computation form issued by the Revenue where net tax payable by the assessee is Rs.19,21,480/- in respect of the appeal of the Revenue. Further it is requested that the under the instruction of assessee wishes to withdraw the appeal in ITANo.251/Ind/2017.

First, we take up Revenue's appeal in ITA No.256/Ind/2017 for A.Y. 2008-09

The revenue has raised following grounds of appeal:

"1. Whether in facts and in the circumstances of the case the ld. CIT(A) has erred in restricting the addition of Rs.44,38,345/- to Rs.13,13,782/- made by the AO by way of estimating the profit @ 4% of gross freight receipts at Rs.11,09,58,622/-, which was over and

above the commission receipts Rs.31,24,563/- shown by the assessee in spite of numerous discrepancies pointed out by the AO in respect of figures reflected in the 26AS and actual receipts shown by the assessee.

2. Whether in the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs.13,15,011/- made by the AO on account of TDS receivables as income u/s 198 in spite of the fact that the amount of TDS certificates were not incorporated in Profit & Loss account.

Whether in the facts and in the circumstances of the case the ld. CIT(A) was justified in deciding the appeal without establishing the facts of the case.

3. We have heard both the parties and perused the material available on record. We are in agreement of the submissions of the Ld. Counsel for the assessee that the Revenue's appeal is not maintainable in view of the Circular No. No. 3 of 2018 dated 11.07.2018.

4. Ld. DR has not demonstrated that the present case falls into any exceptions embodied into the said circular. We, therefore, dismiss appeal of Revenue in ITANo.256/Ind/2017.

Now, we take up Assessee's appeal in ITA No.251/Ind/2017 for A.Y. 2008-09

The assessee has raised following grounds of appeal:

“That on the facts and circumstances of the case, the ld. CIT(A) erred in estimation of commission income At 4% on gross freight amount, which comes to Rs.44,38,345/- against the disclosed commission in profit and loss account of Rs.31,24,563/- without appreciating the facts of the case and submissions made before him.”

5. The assessee has filed a submission seeking withdrawal of the appeal.

6. The Ld. DR has no objection with the submission of the Ld. Counsel.

7. Having heard both the parties we dismiss assessee’s appeal in ITANo.251/Ind/2017 as withdrawn.

8. In the result, both appeals of the Revenue and Assessee i.e. ITA No. 256/Ind/2017 & ITA NO.251/Ind/2017 are dismissed.

Order was pronounced in the open court on 26 .07.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 26/ 07/2018

Patel, P.S/.नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order
Private Secretary/DDO, Indore