

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.684/Kol/2018 Assessment Year:2009-10

Subir Kumar Roy Roy Agency 284, D.H. Road, Behala, Kolkata-700 034 [PAN No.AFPPR 0232M]	बनाम/ V/s.	Income Tax Officer, Ward-55(1), 54/1, Rafi Ahmed Kidwai Road, Kolkata-16
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Robin Chaudhury, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	05-11-2018
घोषणा की तारीख/Date of Pronouncement	16-11-2018

आदेश /O R D E R

This assessee's appeal for assessment year 2009-10, arises against the Commissioner of Income-tax (Appeals)-6, Kolkata's order dated 10.11.2015 passed in case No.609/CIT(A)-6/Kol/2011-12 involving proceedings u/s. 144 of the Income Tax Act, 1961; in short 'the Act'.

Case called twice none appears at assessee's behest. The registry has already sent the assessee an RPD notice dated 19.07.2018 for today's hearing. We therefore proceed ex parte against the assessee. The case is now taken up adjudication on merit.

2. I notice at the outset that assessee's instant appeal suffers from 811 days' delay in filing condonation delay placed on record. The necessary condonation stating reasons thereof in detailed to be communication gap and mistake on part of his auditor stating in not pursuing the matter with due diligence. The same stands unrebutted

during the course of hearing before me. I therefore hold the impugned delay to be neither intentioned nor deliberate but because of communication gap between assessee, his auditor and counsel supposed to pursue his instant appeal. The appeal is now taken up for adjudication on merits.

3. The assessee's sole substantive ground raised in the instant appeal seeks to reverse the CIT(A)'s findings partly confirming the Assessing Officer's action disallowing its carriage outward charges of ₹6,61,675/- to the tune of ₹4,61,675/- thereby granting relief of ₹ 2 lac in lower appellate proceedings. The CIT(A)'s discussion to this effect reads as follows:-

"4. The second ground of appeal is against disallowance of carriage outward of Rs. 6,61,675/-. The AO has discussed the issue in the assessment order as under:-

"(B) Carriage Outward:

The assessee debited Rs. 6,61,675/- in his P&L A/c. under the head "**Carriage Outward**". Vide question no. 14 of the questionnaire to the notice u/s. 142(1) of the Act dated 03.03.2011, the detail of the expenditure under the head Carriage Outward was asked for. The assessee never filed the same. Now, in absence of any compliance from the end of the assessee, it is better to discuss how this trade, in which the assessee is engaged, is carriage out. Normally, a medicine wholesaler/ distributor caters to the other wholesales and retailers or medicine shops. It is normal practice that the wholesaler engages a number of salesmen. They books order from the shops and at the same time also deliver the medicines to them, which were booked in the previous day. It is a regular practice. Unlike the consumer durables, groceries or household goods, where the system of bank deliveries at regular intervals exists, the order booking and subsequent delivery of medicines are done on almost daily basis and in small batches. As the booking is made on daily basis, which nullifies possibilities of any bulk delivery and the medicines are smaller in size(size of tablet or capsule strips, vials, small bottles, ampoules etc. may be considered), there is never a need for delivery by means of any motorized vehicles (like van, matador, lorry. etc.)

It is well known practice that the salesmen carry big bags with their cycles, putting the medicines to be delivered within the bags and visit the medicine shops, which they are entrusted to cover by the wholesaler. It is true for all the wholesalers irrespective of localities except those who are running their business within the central business district of the city. The assessee, having its shop in the fringes of the city is definitely not falling within the exception group. The existence of the above stated system in the case of the assessee is established with the fact that the assessee has over the years shown '**cycles**' as business assets, which we normally don't come across in case of other trades. Therefore, there are actually no expenses to be additionally borne by any, medicines wholesaler. It is pertinent to mention that the assessee didn't charge anything as carriage inward.

The assessee was intimated regarding the above observation and specifically asked to establish why then the expenditure had at all been required to be

incurred as well as how the same had been expended vide the show cause letter dated 21.11.2011, which has been duly served upon him on 22.11.2011. But, ever after passing of a month from the deadline allowed therein to respond, no compliance has been observed from the end of the assessee. So, it clearly implies that the assessee has nothing to say in this regard."

4.1 The appellant has contended in the ground of appeal that the huge quantities of medicines, including medicines in bottles could not be carried only on bicycles and had to be transported by rented tempos/vans etc. and the carriage outward expenses were justified by the huge turnover declared by the appellant. In the remand report, while commenting upon the date-wise payments claimed by the appellant as having been made to van rickshaw / paddle rickshaw/motor rickshaws etc, the AO has stated that the appellant could not provide any details of the addresses of the persons to whom the payments were made. In the reply to the remand report. The appellant stated as under:

"That in the present scenario it is seen that the said business has done crores of sale proceeds in the relevant year, and it has not come from sitting inside a shop room, that it has come from the carriage which has been done by the delivery men to the respective addresses where the medicines has been transferred. Now it is questionable that is it possible to done crores of sale in bicycles, as it is relevant to mention that medicines are order in huge quantities and every medicine is not a capsule or tablets, there are also heavy bottles which are made by glasses, this cannot be carried by any bag, so normally this are carried on rented tempos or motor vans. Also it should be made clear that all delivery men cannot ride cycles with heavy weighted bags due to their different problems, so naturally they are provided with rents for travelling in buses, rickshaw, vans and different public transportations and due to very far distances of some places they have to change different transports to reach that particular place, therefore they have to be paid much rents. This is a daily routine and a large numbers of delivery man are engaged in this process, so it will be not void to say that the carriage is nil, instead it can be seen that a large amount is spent on out warding of the carriages. "

4.2 I have considered the facts of the case, the appellant's submissions and the remand report. I have also examined the assessment record. The addition of Rs.6,61,675/- was made as no details whatsoever were produced by the appellant during the assessment proceedings and the AO was of the view that that in the line of the appellant's business and considering the number of cycles owned by the appellant, which would be used by salesmen for delivery of the medicines to retails shops, no expenses on carriage outward were necessary. In the reply to the remand report as well as the ground of appeal, the appellant has contended that the expenses were actually incurred on payments to vans/rickshaws/tempos etc. for carrying the medicines to the retailers. However, no specific details have been provided and even in the appellate proceedings only a vague date wise list of amounts paid to various vans/rickshaws has been provided. The expenses, to say the least, are not all verifiable. During the appellate proceedings, the appellant was specifically asked to appear with books of account, vouchers/bills etc. to justify the disputed expenses but there was no compliance. The appellant has made only general remarks without furnishing any comparison with earlier years or similarly engaged businessmen. Under the circumstance, the appellant's claim for carriage outwards cannot be

allowed fully. However, it cannot be 'denied that the appellant would have incurred some expenses on carriage outwards to achieve his turnover of Rs.12,95,05,056/ -. Hence, it is considered reasonable to allow a sum of Rs. 2,00,000/- as carriage outward. The balance disallowance of Rs. 4,61,675/- is confirmed.'"

4. Mr. Choudhury vehemently contends during the course of hearing that the assessee could not produce all the relevant details before both the lower proceedings in support his carriage outward claim. I find that both of the lower authorities have not drawn any comparison of the impugned outward carriage expenditure vis-à-vis those in preceding or succeeding assessment years. The fact also remains that the assessee has not been able to substantiate his case either in assessment or during lower appellate proceedings. I deem it appropriate in this peculiar facts and circumstances that the assessee's impugned claim of ₹6,61,675/- deserves to be disallowed to the extent 35% and balance 65% deserves to be accepted on pure estimation basis. The Assessing Officer is directed to finalize necessary computation. It is made clear that the instant adjudication based on estimation shall not be treated as a precedent in any preceding or succeeding assessment year.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in open court on 16/11/2018

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 16/11/2018 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Subir Kr. Roy Proprietor of Roy Agency, 284, D.H. Road, Behala, Kolkata-700 034
2. प्रत्यर्थी/Respondent-ITO Ward-55(1), 54/1, Rafi Adhemd Kidwai Road. Kolkata-16
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।