

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)**

**ITA No. 1382/Kol/2017**  
Assessment Year: 2012-13

**Sri Nikhil Chandra Mitra.....Appellant**  
**34, Chaulpatty Road**  
**Baguiati**  
**Kolkata - 700 059**  
**[PAN : AHXPM 9169 L]**

**Vs.**

**Deputy Commissioner of Income Tax, Circle-49, Kolkata.....Respondent**

**Appearances by:**

*Shri S.M. Surana, Advocate, appeared on behalf of the assessee.*

*Shri Robin Choudhury, Addl. CIT, Sr. D/R. appearing on behalf of the Revenue.*

Date of concluding the hearing : October 15<sup>th</sup>, 2018

Date of pronouncing the order : November 9<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-15, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 24/04/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. The assessee is an individual and is engaged in the business of undertaking job work of dying, as well as, wholesaler in rice and transportation business.

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. Ground No. 1 is general in nature.

5. Ground No. 2 is on the addition made on account of variations in turnover. The turnover declared by the assessee, when compared with the turnover mentioned in Form No. 26AS disclosed a discrepancy of Rs.3,61,175/-. The issue is whether the entire discrepancy is to be added or only a percentage of profit has to be added on such

discrepancy. This issue is covered by the judgment of the Delhi Bench of the ITAT in the case of *Dhoosingh vs. ITO, Baraut* in ITA No. 1588/Kol/2017, dt. 13/08/2017.

Respectfully following the same, we direct the Assessing Officer to adopt 2% of the discrepancy in turnover as profit. Hence, this ground of the assessee is allowed in part.

6. Ground No. 3 is against a similar addition made on account of difference between the amount recorded by the assessee that the amount disclosed in Form No. 26AS. The figure in question relates to commission. Form No. 26AS shows that the assessee received commission of Rs.1,13,922/-. The assessee denies having received any commission. No evidence in support of this contention has been filed by the assessee. Thus, we uphold the finding of the Id. CIT(A) at para 3.3. page 5 of his order.

*"3.3. Grounds of appeal No. 5: In the proprietary concern M/s Baba Taraknath Stores, which is involved in the whole sale business of rice, 26AS shows that assessee received commission of Rs. 1,13,922/- from Punjab Greenfield Resources Limited. As this amount was not declared in the return, addition of Rs. 1,13,922/- has been made. Appellant had submitted that he has purchased rice from Punjab Greenfield Resources Limited, but he has not received any commission from this party. Neither he was informed about any entry of commission in Form 26AS. Assessee further says that AO should have made verification from this party before making addition.*

*I have considered the facts of the case and the submissions of the assessee. Assessee is having regular business transaction with this party. Even if we presume it to be true that assessee was not aware of the commission income, it has done nothing since the assessment were made to clarify this issue with the concerned party with whom he is regularly doing business. Neither assessee has obtained any denial from the party nor the assessee has got corrections made in Form 26AS. Under the circumstances addition of Rs. 1,13,922/- is confirmed."*

Accordingly, Ground No. 3 of the assessee allowed.

7. Ground No. 4, is against the disallowance of Rs.21,27,619/-, u/s 40(a)(ia) of the Act, for non deduction of tax at source from payments made towards lorry hire charges. The assessee's case is that, it purchased goods and it was the seller of the goods, who engaged the carrier and supplied goods to the assessee. Transport charges were paid along with purchase price to the seller of the goods who in turn made the payments to the carriers. This fact is evidenced by bills. The assessee submits that it was a case of reimbursement of expenditure to the seller and not a case of assessee incurring transportation expenditure. The claim of the assessee is proved on an examination of the bills. It is well settled that no tax need be deducted at source while expenditure is re-

imbursed to the seller. Though, the assessee had paid certain transporters directly on behalf of the seller, in our opinion, it does not mount to there being a contract between the assessee and the transporters. The fact that the seller has engaged the transporter is not in dispute.

7.1. Under these circumstances, we are of the opinion that no tax need be deducted at source on such payments. Consequently, the deduction u/s 40(a)(ia) of the Act, is deleted and this ground of the assessee is allowed.

8. Ground No. 5 is an alternative contention that only 30% of the disallowance u/s 40(a)(ia) need be made.

As we have allowed Ground No.4 of the assessee, we need not adjudicate Ground No. 5 of the assessee.

9. Ground No. 6 is against the disallowance made u/s 40(a)(ia) of the Act, for non deduction of tax on generator rent paid to Shri Sur Alok.

The assessee's submission is that, Shri Sur Alok has included the amount in question as income in his return of income and paid taxes, hence in view of the proviso to Section 201(1) of the Act, no disallowance can be made. The Id. CIT(A) has rejected these contentions of the assessee on the ground of the assessee on the ground that SHri Sur Alok has filed a belated return. The Section in question states that the return of income has to be filed u/s 139 of the Act. Sub-Section is not mentioned. Under these circumstances, we are of the view that the Id. CIT(A) was wrong in coming to a conclusion that the proviso to Section 201(1) of the Act, does not come into play if the return of income is filed by the deductor u/s 139(4) of the Act. Hence we delete the disallowance.

10. Ground No. 7, 8 & 9, are general in nature.

11. In the result, appeal of the assessee is allowed in part.

***Kolkata, the 9<sup>th</sup> day of November, 2018.***

Sd/-  
**[S.S. Viswanethra Ravi]**  
Judicial Member

Dated : 09.11.2018  
{SC SPS}

Sd/-  
**[J. Sudhakar Reddy]**  
Accountant Member

*Copy of the order forwarded to:*

**1. Sri Nikhil Chandra Mitra**  
**34, Chaulpatty Road**  
**Baguiati**  
**Kolkata – 700 059**

**2. Deputy Commissioner of Income Tax, Circle-49, Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches