

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

**Before Sri J. Sudhakar Reddy, Accountant Member**

**I.T.A. No. 1727/KOL/2018  
Assessment Year: 2014-15**

***Shri Vijay Bantawa*.....*Appellant*  
*[PAN : AGRPB 9467 D]***

***ITO, Ward-3(3), Darjeeling*.....*Respondent***

**Appearances by:**

*Shri Subash Agarwal, Advocate, appeared on behalf of the Appellant.  
Shri Robin Choudhury, Addl. CIT, appeared on behalf of the Respondent.*

Date of concluding the hearing : January 9, 2019

Date of pronouncing the order : January 16, 2019

**ORDER**

**Per J. Sudhakar Reddy :-**

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-11, (hereinafter the 'Id. CIT(A)'), dated 27.04.2018 passed u/s 143(3) of the Income Tax Act, 1961 (the 'Act') for the assessment year 2011-12.

2. The sole issue that arises in my consideration is whether the provisions of section 44AD of the Act can be applied to the assessee. The Assessing Officer as well as the CIT(A) was of the opinion that, as per provision of section 44AD(6)(ii), the section cannot be applied to commission agents and that the assessee derives income from commission on sale of railway tickets. The assessee's case is that he is not a mere commission agent as per the Agreement with the North-East Frontier Railway and that in addition to selling of tickets is

required to undertake other jobs like arranging transport to passengers and luggage between the places, SGNJ & NJP Railway Station. Copy of the Agreement is furnished. On perusal of this Agreement, we find that the argument of the assessee is correct. The assessee books railway tickets and Clause (c) of the Agreement requires that the assessee in addition to booking has to arrange conveyance to passengers and luggage. Clause (d) and Clause (f) of the Contract are extracted for ready reference:

*“(d) The Out-Agent shall convey by motor vehicles or otherwise as the case may require with all reasonable diligence and speed to the satisfaction of the Chief Commercial Superintendent of the Northeast Frontier Railway (hereinafter referred to as the Chief Commercial Superintendent) and deliver to the consignee or to the Northeast Frontier Railway at SGNJ and NJP Railway Station as the case may be luggage traffic consigned to or from Mirik Out-Agency from or to any station except SGNJ / NJP Railway Station on the Northeast Frontier Railway and other carrying and Out-Agencies with which the Northeast Frontier Railway has or may have through booking arrangements.*

*(f) The Out-Agent shall arrange to carry between SGNJ and NJP Railway Station to the Mirik Out-Agency, passengers and luggage traffic by motor vehicles. In case of emergency or rush abnormal traffic the Out-Agent shall arrange to continue to fulfil the terms and conditions of this Agreement by employing at its own risk, responsibility and expense such additional transport in addition to their normal fleet of vehicles, as may be necessary to cope with the traffic offering, at the same time indemnify the Railway Administration under the Terms of this Agreement against any loss, damage, injury etc. caused in such additional transport/in their own transport (duly covered by insurance).”*

2.1 I further observe that railways has deducted TDS u/s 194C only. Hence, the assessee is not a mere commission agent and hence not hit by section 44AD(6)(ii) of the Act. The Assessing Officer is directed to assess the income from this Contract earned by the assessee by applying the provision of section 44AD. Hence, I allow this ground of the assessee.

3. Ground No.2 is on the addition made of recurring deposits. The assessee seeks telescoping benefit on this addition. In view of the fact that I have allowed

Ground No.1 of the assessee, there is no scope of granting telescoping benefit. Hence, this ground of the assessee is dismissed.

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

***Kolkata, the 16<sup>th</sup> January, 2019.***

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

Dated : 16.01.2019  
RS(Sr.PS)

*Copy of the order forwarded to:*

- 1. Shri Vijay Bantawa, C/o Subash Agarwal & Associates, Siddha Gibson, 1, Gibson Lane, Suite-213, 2<sup>nd</sup> Floor, Kolkata - 700 069.***
- 2.ITO, Ward-3(3), Darjeeling, 27(19) AJC Bose Road, Near Lalkothi, P.O & Dt. Darjeeling - 734101, W.B.***
- 3. CIT(A)-***
- 4. CIT- ,***
- 5. CIT(DR),***

True copy

By order

Assistant Registrar , Kolkata Benches