

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "A+SMC", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3276/Del/2018
Assessment Year: 2010-11

M/s. National Transport Company, M/s. NTC Supply Chain Solutions Pvt. Ltd., 1217, 12 th Floor, DLF Tower-B, Jasola District Centre, Jasola, New Delhi	Vs.	Income Tax Officer, War-47(3), New Delhi
PAN :AAAFN6341H		
(Appellant)		(Respondent)

Appellant by	Shri K. Sampath, Adv. & Shri V. Raja Kumar, Adv.
Respondent by	Shri S.L. Anuragi, Sr.DR

Date of hearing	09.01.2019
Date of pronouncement	23.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 28/03/2018 passed by the Ld. Commissioner of Income-tax (Appeals)-34, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11, raising following grounds:

On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the following actions of the Assessing Officer:

1. *Rejecting the books of accounts u/s 143(3) of the Income-tax Act, 1961.*
2. *Estimating income in a sum of Rs.29,00,000/- against the returned income of Rs.7,75,950/-.*

Both the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

2. Briefly stated facts of the case are that the assessee, a partnership firm, was engaged in transportation of goods through owned as well as hired/leased trucks/tankers. For the year under consideration, the assessee filed return of income on 15/10/2010 declaring total income of Rs.7,75,950/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. The Assessing Officer noticed remark of the tax auditor that audit has been carried on under section 44AB of the Act and income and expenditure account included income of heavy vehicles (tankers) assessable under section 44AE of the Act. In view of the various defects observed in the books of accounts maintained by the assessee, the Assessing Officer rejected books of accounts and estimated the profit of the business of the assessee in the assessment under section 143(3) of the Act completed on 30/03/2013. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who upheld this action of the Assessing Officer with the direction to allow interest and remuneration to the partners in accordance with the provisions of section 40(b) of the Act. Aggrieved with the finding of the Ld. CIT(A) of confirming the rejection of books of accounts and estimation of income by the Assessing Officer, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The assessee has raised both the grounds of rejection of books of accounts and estimation of the income at Rs.29,00,000/- as against the returned income of Rs.7,75,950/-.

4. We have heard the rival submissions and perused the relevant material on record including the order of the lower authorities as well as the paper book containing pages 1-61 filed by the assessee.

4.1 In the case, the assessee is a transporter and carried the business of transportation using three separate type of tankers i.e. tankers owned, tankers hired and tankers taken on lease. In the preceding year also the assessee done the business of transportation with the help of the tankers owned, hired and taken on lease. In the assessment order, the Assessing Officer has made following observations in respect of the books of accounts and vouchers maintained by the assessee:

- “1. In the preceding assessment years the assessee made separate accounts for owned tankers, hired tankers and lease tankers, whereas in the year under consideration no separate accounts were prepared and failed to submit net income from three different types of tankers during the assessment proceeding.
2. The assessee failed to furnish month-wise bifurcations of the expenses of diesel and repairs including month wise purchase of the diesel. The contention of the assessee was that no separate account for diesel and repair were maintained by the assessee.
3. The Assessing Officer observed that during the year under consideration lease rent of Rs.1,45,44,000/- has been paid to two sister concerns as against lease rent of

Rs.63,30,000/- in the immediately preceding assessment year. The Assessing Officer also observed that the lease rent paid constitute 30.45% of gross receipts from such tankers. The Assessing Officer observed a loss claimed of Rs. 16, 68, 517 on 11 leased tankers and income of Rs.700 per month in case of one leased tanker.

4. In case of the tankers owned by the assessee, the Assessing Officer observed income of Rs.76,47,277/- (before depreciation) from the receipt of Rs.2,74,34,326/- and after claiming depreciation of Rs.62,42,768/-, net profit of Rs.13,98,509/-was observed.
5. The assessee failed to furnish expense details of "Gandhidham" Office. The contention of the assessee was that only loading of tankers was carried out at the port and no other activities were carried out and all the expenses were incurred by the head office.
6. The Assessing Officer made enquiries from the various debtor/creditor parties and found difference in the ledger accounts of those parties maintained by the assessee and accounts of the assessee appearing in their books of accounts. The contention of the assessee that the difference might be on account of the freight paid, shortage and advance to drivers, however individual ledger accounts were not reconciled by the assessee."

4.2 In view of the deficiencies observed, the Assessing Officer rejected the books of accounts of the assessee invoking provisions of section 145(3) of the Act and estimated the income at the rate of Rs.50,000 per tanker in respect of the 18 tankers owned by the assessee and 30 tankers taken on lease. In case of the tankers

taken on hire, the Assessing Officer estimated income of Rs. 5 lakh on net basis.

4.3 The Ld. CIT(A) after analyzing the submission of the assessee as well as the finding of the Assessing Officer confirmed the rejection of books of accounts observing as under:

“5.2.14. In view of above mentioned findings of the AO, It Is crystal clear that appellant's regular books of accounts were not reliable and it was not possible to estimate the correct profits of appellant's business on the basis of regular books of accounts maintained by the appellant. AO has not only observed a large number of deficiencies in as much as assessee has not been able to furnish a large number of details called for, which were essential in order to not only establish the authenticity and genuineness of various figures mentioned in the books of accounts but were even essential to worked out the correct profits of appellant's business. AO, while rejecting the books of accounts of the appellant's, has also categorically observed that in the preceding F.Y., assessee had maintained a separate Income and Expenditure account of Own Tankers, but this year, he could not furnish such details. In these facts and circumstances of the case the action of the AO in rejecting the books of accounts of the appellant in view of the provisions of section 145(3), is fully justified. The action taken by the AO is accordingly upheld. Ground no. 1 of the appeal is accordingly dismissed.”

4.4 Further, he sustained the amount of income estimated by the Assessing Officer as just and reasonable. The finding of the Ld. CIT(A) on the issue of the income estimated is as under:

“5.2.15. Further, since various important details called by AO during the proceedings, which were vital in order to correctly arrive at the figure of net profit earned by the appellant, could not be furnished by the appellant, and even the enquiries made by the parties revealing discrepancies could not be resolved by the appellant, who kept on giving evasive replies to AO, there was no option with the AO but to assess the income on some reasonable basis. In this regard, keeping in view the fact that various findings of the AO, remained uncontroverted even in these appellate proceedings, the net profit assessed by AO, as discussed in para 5.2.9 of the order above, do not require any interference and the same Is upheld. AO has assessed the net profit in respect of Tankers taken on Lease, taking

an overall income of Rs.50,000/- per truck p.a, which is quite reasonable, as it works out to just a little more than Rs. 4,000/- per month per tanker. Accordingly, the net profit assessed from tankers taken on lease, at Rs. 24 lac, is upheld. Similarly, in respect of Income from hired trucks, AO observed that the assessee has not to incur major expenses on repairs etc. and after accepting the net receipts from hired trucks as admitted by the appellant himself amounting to Rs. 1,71,30,734/-, AO estimated income from hired trucks at Rs. 5,00,000/- net, which worked out to a net profit rate of 2.91% of the receipts, which is quite reasonable and no interference is called for. Accordingly, the entire addition amounting to Rs. 29 lac made by the AO is upheld.”

4.5 Before us, the Ld. counsel of the assessee submitted that accounts of the assessee are duly audited and no defects have been pointed out by the tax auditor and thus Assessing Officer is not justified in rejecting the books of accounts merely on the ground that month wise details of the diesel and repair expenses was not submitted by the assessee. According to the Ld. Counsel such details were not available with the assessee. We are not convinced with the arguments of the Ld. Counsel. In the paper book, the assessee has filed income and expenditure account of owned tankers and leased tankers at page 26 and 25 respectively. On perusal of the said accounts, we find that assessee has prepared a table of diesel and repair expenses in respect of the each tanker. The said detail of diesel and repair expenses must have been prepared on the basis of relevant vouchers. If such vouchers are available with the assessee, we are unable to understand as why the month-wise details of separate diesel and repair expenses cannot be prepared. If the assessee refuse to provide such details for comparison of the expenses during the year vis-à-vis expenses incurred in the immediately preceding year, then there is no choice with the Assessing Officer except to reject books of accounts. In absence of such details along with

other deficiencies observed by the Assessing Officer like higher lease expenses paid to related parties, no detail of expenses of Gandhidham branch, non-reconciliation of ledger account of parties etc, the action of the Ld. CIT(A) in affirming the rejection of books of accounts, is justified. Non-reconciliation of ledger accounts of creditor/debtor parties definitely render the books of account as not correct. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue-in-dispute.

5. On the issue of estimation of the income from the tankers owned and leased by the assessee, The Ld. CIT(A) has noted that income of Rs. 50,000/-per tanker per annum has been estimated by the Assessing Officer, which according to him is reasonable as same works out to around Rs.4000 per month per tanker. We note that during the relevant period under the section 44AE of the act i.e. under the presumptive scheme of the taxation in respect of plying, hiring or leasing goods carriages, monthly income for heavy vehicle has been estimated at Rs. 5000 per month per vehicle and for other than heavy goods vehicle income has been estimated at Rs.4500 per month per vehicle. We find that the estimation made by AO/CIT(A) is not based on irrational parameters. In comparison with the estimation of income under the presumptive taxation, we find that the estimation made by the Ld. Assessing Officer in the present case and confirmation of the same by the Ld. CIT(A) is justified and reasonable.

5.1 In case of tankers on hire, the Ld. CIT(A) has noted that the assessee was not required to incur expenses on repairs etc and thus estimation of net profit of Rs. 5 lakh, which works out to 2.91 percent of the receipt of Rs.1,71,30,734 from the hired truck. We find that on page 51 of the paper-book, the assessee

has provided comparative chart of income and expenditure for the financial year ending on 31/03/2009 and 31/03/2010. For the assessment year under consideration i.e. financial year ending on 31/03/2010 the receipt from hired tanker has been shown at Rs.1,71,30,734/- whereas expenses on freight on hired tankers (trucks) has been shown at Rs.1,60,09,260/-. In such a scenario, the gross profit from higher tanker as per the accounts of the assessee would be around Rs. (1,71,30,734 – 1,60,09,260)= 11,21,474. When the assessee itself has shown gross profit of rupees more than 10 lakh from the hired tankers, the estimation of the net profit from those tankers at Rs. 5 lakh by the Ld. AO and confirmation of the same by the Ld. CIT(A) cannot be said arbitrary and in our opinion same is just and reasonable. Accordingly, the objection of the assessee against estimation of the income from tankers, are rejected. The grounds of the appeal are accordingly dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 23rd January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 23rd January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi