

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1610/Kol/2016
Assessment Year :2011-12

Swapnendu Mishra Kumarpur, Contai, Purba Medinipur-721401 [PAN No.AEYPM 6194 B]	V/s.	JCIT, Range-Haldia Basudevpur, Khanjanchak, Haldia, Puurba Medinipur- 721604
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sourav Kumar, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	14-01-2019
घोषणा की तारीख/Date of Pronouncement	30-01-2019

आदेश / O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2011-12 arises against the Commissioner of Income Tax (Appeals)-7, Kolkata's order dated 30.05.2016, passed in case No.549/CIT(A)-7/Range-27/14-15, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. We notice at the outset that the instant appeal suffers from 12 days' delay in filing. The assessee has placed on record his condonation petition / affidavit dated 05.08.2016 attributing reasons thereof to lack of proper documentation and necessary instructions with the arguing counsel within the limitation prescribed. Learned Departmental Representative is very fair in not disputing correctness of these solemn averments. We therefore condone the impugned 12 days delay in filing of the instant appeal as neither intentional nor deliberate. The case is now taken up for adjudication on merits.

Heard both the parties. Case file perused.

3. It emerges during the course of hearing that the assessee's twin substantive grounds seek to reverse both the lower authorities' action making addition of unaccounted purchases sale of free stock involving corresponding sums of ₹89,26,696/- (enhanced) in lower appellate proceedings as against ₹10,22,274/- added during the course of assessment(closed) and ₹46,02,570/-; respectively. The CIT(A)'s detailed discussion *qua* these two issues reads as follows:-

“2.0 All the Grounds of appeal are related to the above addition of Rs.10,2,274/- on account of suppressed GP margin and concealed receipts of Rs.46,02,570/-. The appellant has not fled the Grounds of appeal independently for each addition. However, during the hearing, the appellant stated that all the additions contested in this appeal.

2.1 The Assessing Officer discussed the additions in page no. 2 of the assessment order. For the sake of convenience and clarity, I reproduce the relevant extract of the assessment order which reads as under:-

'The sales figure received from the company totaled to Rs.18,34,68,048/- (Rs.5,98,37,653 + Rs.12,36,30,395/-) while the assessee in his P&L account declared purchases of only Rs.17,45,41,352/-. Sri P.K. Jana, AR for the assessee vide order sheet noting dated 28/03/2014 was asked to explain as to why the assessee had under recorded his purchases by Rs.89,26,696 and also failed to disclose the receipts by way of commission of Rs.50,57,769/- given to him by the company, as per his audited profit and loss account. The assessee's entire sales are in cash and as per his audit report he has not maintained any quantitative details or records of his purchases, sales, opening stock and closing stock. In other words, the assessee records in his books the transactions to the extent they are convenient to him. The assessee has totally concealed the receipt of commission of Rs.50,87,769/- by him (net received by him from the company after adjustments). Accordingly the same requires to be added to his income. From discounted margin of Rs.83,11,322/- the assessee has shown only Rs.10,22,195/- as his margin of gross profit. It unbelievable that the assessee will keep only 0.58% and give away the rest to the retailers. The assessee by under recording his purchase to the tune of Rs.89,26,696/- has creed room for manipulating his sales figures received entirely in cash. The normal practice in the telecom sector i.e.Vodafone, Tata Tele Services etc., is that the distributor keep one-fourth of the discounted price and pass on the rest to the retailers. As the commission earned by them is also saleable stock, they never distinguish between the paid for stock and that received against their commission, when it comes to selling the same through the retailer i.e., in other words they sell their free stock by paying the retailers the same margin as they pay on the normal stock. Accordingly the assessee has retained 3% as his GP and given 9% to the retailers on the free stock to the extent of his commission, which he has sold through them. In view of the said facts the assessee has

earned Rs.20,44,469/- as his gross profit margin allowing the retailer to earn Rs.62,66,853/- as their margin on the stock purchased and paid for. He has also given the retails 9% of Rs.50,57,769/- = Rs.4,55,199/-. In conclusion the income concealed by the assessee is R.46,02,570/- (Rs.50,57,769 – Rs.4,55,199) and Rs.10,22,274/- (Rs.20,44,469 – Rs.10,22,195) being the suppressed GP from his gross margin of 3%. As the assessee has manipulated his income by fudging his figures, concealment penalty proceedings are being separately initiated.'

2.2 During the appeal the appellant made written submissions as under:-

1. That I'm suffering in severe illness in FRONTO CRONIC UBDURAL EMATOMA ON CLORIDOGRIEL and other disease.
2. That the incentive d commission does not received by me by cash, it is adjusted with the purchase, so there was no concealment.
3. That the incentive and commission received by me has included with the purchase & Sale figure, so there was no concealment in total turnover of my business.
4. That in the case of distributorship business, the Net Profit can never exceeds 1% of the turnover. He profit margin of my business is very low because so many expenses should be provided to the sub-dealer to maintain the business properly, yet I have claimed my business Net profit 0.35%. But the Assessing Officer has calculated the income of my business on the maximum high rate.
5. That the assessee craves leave to press new and additional grounds of appeal and or to modify withdraw revise grounds of appeal, in course of hearing of the case.

3.0. I have gone through the assessment order and the submissions made by the authorized representative of the appellant. On verification of the assessment order it is noticed that the appellant has understated the purchase by Rs.89,26,696/- and did not disclose the commission of Rs.50,57,769/- and the Assessing Officer made addition of Rs.10,22,274/- towards the suppression of the purchases of Rs.89,26,696/- and Rs.46,02,570/- on account of commission. Therefore, authorized representative of the appellant was requested to explain the reasons for understatement of purchases and non-disclosure of the commission received during the appeal hearings. Since no reply was forthcoming I have issued an enhancement notice on 19.05.2016 which were served on the authorized representative of the appellant on the same date directing him to explain as to why the entire unaccounted purchases of Rs.89,26,696/- and undisclosed commission of Rs.50,57,769/- should not be brought to tax.

3.1. In reply the authorized representative of the app submitted his reply as under:-

1. A) That the purchase difference of Rs.89,26,696/- may be correct between the purchase figure given by the company and the purchase figure shown in the Trading account of the assessee. Due to severe illness in FRONTO CRONIC SUBDUAL HEMATOM ON CLORIDOGRIEL and sudden death of assessee's father the assessee failed to submit the all documents at the time of preparation of account. So the difference purchase figure will not treat as

unaccounted purchase. Regarding this difference the assessee is silent and not making any objection.

B) In the case of distributorship business, the net profit can never exceed 1% of the turnover. The profit margin of the business is very low because so many expenses should be provided to the sub-dealer to maintain the business properly, yet the assessee has claimed 0.35% as net profit of the business. But the Assessing Officer has calculated the income of the business on the maximum high rate which is impossible to run such type of business.

2. That the commission amount of Rs.50,57,769.00 which received by the assessee has given to the sub-dealer so the commission amount will not be added with income of the assessee.

3. That the commission amount as given by the company which is included with the purchase & sale figure, so there was no concealment in total turnover of my business.

4.0 I have carefully gone through the submissions made by the appellant. During the appeal I have given sufficient opportunities to explain the case and to produce necessary evidences to substantiate the claim. The case was fixed for hearing on 15 occasions. The appellant has made purchases of Rs.18,34,68,048/- and accounted only Rs.17,45,41,352/- and there was a suppression of Rs.89,26,696/-. The appellant required to explain the source of purchases. The appellant accepted that there was a difference of Rs.89,26,696/- but he stated that difference should not be treated as unaccounted purchases. He argued that the appellant is a distributor of Bharti Airtel net profit has never exceeded 1% of the turnover. The profit margin was very low because of so many expenses involved in the business. Therefore he requested that no addition should be made on account of unaccounted purchases. The appellant failed to produce any evidence regarding the source of purchases in respect of unaccounted purchases. The AO estimated the gross profit on unaccounted purchase and brought to tax. In the absence of any evidence regarding the source of unaccounted purchases, the entire unexplained investment relating to the unaccounted purchases required to be brought to tax. Since the appellant failed to furnish any evidence regarding the source either with the books of account or with any other documentary evidence I hold that the entire investment is made out of unexplained sources. Accordingly, I enhance the addition of Rs.10,22,274/- to Rs.89,26,696/- under section 69 of Income Tax Act, 1961. I direct the AO to make the addition of Rs.89,26,696/- instead of Rs.10,22,274/- on account of unaccounted purchases. Accordingly, the addition is enhanced.

5.0 The AO made the addition of Rs.46,02,570/- on account of unaccounted commission. As per the assessment order it is seen that the appellant had not disclosed the commission of Rs.50,57,769/-. The AO estimated the profit element on undisclosed commission of Rs.50,57,769/- at Rs.46,02,570/-. Since the appellant has not disclosed the commission, I have requested the authorized representative of the appellant to explain as to why the entire commission should not be brought to tax. The authorized representative of the appellant did not submit the reconciliation. Therefore I have issued enhancement notice vide my letter dated 19.05.2016.

5.1 In response to my letter the appellant filed his reply as under:-

That in the case of distributorship business, the net profit can never exceeds 1% of the turnover. The profit margin of my business is very low because so many expenses should be provided to the sub-dealer to maintain the business properly, yet I have claimed my business net profit 0.35%. But the Assessing Officer has calculated the income of my business on the maximum high rate.

That the assessee craved leave to press new and additional grounds of appeal and or to modify withdraw revise Grounds of appeal, in course of hearing of the case.

5.2 I have gone through the submissions made by the appellant but do not find force in the argument. The appellant required to furnish the details of the commission paid to various sub-dealers. The appellant failed to submit any such details or any evidences. In the absence of evidences the entire undisclosed commission required to be brought to tax. However, in the above paragraphs I have brought to tax the undisclosed purchases amounting to Rs.89,26,696/-. The authorized representative of the appellant requested to give telescopic benefits of Rs.50,57,769/- from the addition of Rs.89,26,696/-. I have considered the submissions made by the authorized representative of the appellant and agree with the authorized representative of the appellant that the appellant is entitled for telescopic benefit from the addition of Rs.89,26,696/-. Therefore, no separate addition is required to be made on account of undisclosed commission.”

4. We have heard rival contentions. This assessee is a distributor of Airtel receiving mobile coupons from cellular operator and forwarding the same to sub-distributors. This is not the Revenue's case that assessee has sourced his SIM cards through any other operator. Both the lower authorities' have made the impugned addition going by purchase margins and lack of source of unaccounted purchase. We make it clear that assessee has sourced his mobile coupons from cellular operator M/s Bharti Airtel only. This operator has acted as deductor in assessee's for TDS purposes u/s 194C and 194H of the Act. Form 26ASS in assessee's case forming part of the case file reveals that the deductor has shown total amount / paid credited to the tune of ₹29,806,86/-. These clinching figures have gone unrebutted during the course of hearing before us. We therefore go by this Form 26AS figures in assessee's case to be correct as per department record itself and direct the Assessing Officer to restrict the impugned former addition of ₹89,26,696/- to the extent of the cellular operators' TDS statement only as per law. The Assessing Officer

shall finalize consequential computation accordingly. The assessee gets part relief in above terms in former substantive ground.

5. Coming to latter issue of addition of ₹46,02,570/- there is no dispute that both the lower authorities have assessed the same as concealed receipts from sale of free stock against commission. We reiterate that this assessee is a SIM distributor deriving commission income. Both the lower authorities have neither rejected his books of account nor have rebutted the fact that the gross profit component therein is @ 0.58%. We therefore direct the Assessing Officer to restrict the impugned latter addition to the extent of gross profit component @ 0.58% only as per regular business profits since the assessee has not been given credit of all direct and indirect costs in SIM card distribution business. The Assessing Officer shall finalize consequential computation going by gross profit rate @ 0.5% qua this latter issue. The assessee gets part relief accordingly.

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

Order pronounced in the open court 30/01/2019

Sd/-

(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-

(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 30/01/2019 कोलकाता ।

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

1. अपीलार्थी/Appellant-Swapnendu Mishra Kumarpur, Contai, Purba Midinipur-721401
2. प्रत्यर्थी/Respondent-JCIT, Range-Haldia, Basudevpur, Khanjanchak, Haldia, Purba Medinipur-721604
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।