IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 578/Asr/2013
Assessment Year: 2008-09

Choudhary Enterprises, Ganpati Agro Complex, Malout Road, Bathinda [PAN: AAEFC 2374B]	vs.	Income Tax Officer, Ward 1(2), Bathinda
(Appellant)		**(Respondent)**

Appellant by : Sh. Ashwini Kalia (C.A.)
Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 23.01.2019
Date of Pronouncement: 07.02.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals), Bathinda ('CIT(A)' for short) dated 10.07.2013, dismissing the assessee's appeal contesting its' assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 02.12.2010 for Assessment Year (AY) 2008-09.

2. The first issue raised in appeal is *qua* an addition in the sum of Rs.4,14,900/- on account of difference in the charges receivable as per the assessee's accounts and that as per the tax deduction statement (Form 26 AS), which, as per the payers, stand credited to the assessee's account during the year in their books, deducting tax thereon; the latter being higher by the impugned sum. The assessee-firms', a Clear and Forwarding (C&F) agent for Shriram Fertilizers and Chemicals Ltd.,

New Delhi, earning in the main handling charges and rent, books disclosed handling charges and rent income for the year at Rs.20,12,826 and Rs.2,59,120 respectively (through credit to the profit and loss). The corresponding figures as per the TDS certificates issued by the principal for the relevant year are at Rs.24,12,213 and Rs.2,74,633 respectively, resulting in the impugned difference. The assessee explained the same to be due to the excess amount having been already credited to the operating statement for an earlier year, i.e., on the raising of the relevant bills, credit for which though has been allowed by the principal only in the current year and, accordingly, deducted tax thereon. As no reconciliation, however, was submitted, the same was added as the income for the year; the assessee having claimed the entire amount of tax deducted at source, i.e., on Rs.26,86,846, in its' return of income. In appeal, the assessee filed a reconciliation statement (stated as Annexure-B to the impugned order, which though is not enclosed along with the impugned order). However, even as per the same the gross receipts were at Rs.21.79 lacs (for handling charges) and Rs.2.53 lacs (for rent), so that difference to a substantial extent remain unreconciled. Further, the assessee had not furnished bills of the earlier years to support its' claim of the impugned sum as having been already accounted for as income for those years. The addition was, accordingly, upheld, so that, aggrieved, the assessee is in further appeal.

3. We have heard the parties, and perused the material on record.

The reconciliation statement, based on the account statement of the principal and the assessee-agent in each others' books of account, appear at paper-book (PB) pgs.10-11, admittedly furnished for the first time before the first appellate authority. The difference, as a perusal thereof shows, is on account of:

(a) bills/claims raised by the assessee in an earlier year credited by the principal during the current year;

(b) bills of the current year not credited by the principal to the assessee's account during the current year; and

(c) service tax component of the bills, being accounted for separately by the assessee.

The ld. CIT(A) ought to have, admitting the same, called upon the Assessing Officer (AO) to verify the same in terms of Rule 46A. He examines the same, implying their admission, but draws an incorrect inference there-from. For example, the figure of Rs.21,79,075, as stated by him, is not the gross receipt as per the TDS certificates, but Rs.24,02,322, stated to be the correct figure of the handling charges (instead of Rs.24,12,213). Likewise for the figure of Rs.2,53,252, stated by him in respect of rent. The second aspect of the matter is the accounting of the credits at (a) above by the assessee as income for an earlier year/s, for which the assessee has furnished the copy of the account of the principal in its' books for 30.11.2005 (PB pg. 19). That for fy 2006-07 was also required in-as-much as some of the bills stated in the reconciliation statement pertain to that year. Why this was also not furnished along with or, in any case, not called for, including the relevant bills, if required, to verify the same, is beyond us, resulting in a simple matter of reconciliation of accounts, which ought to have been resolved at the stage of AO itself, travelling to us. Why, again, was the AO not required to verify and report to him by the ld. CIT(A) is again anybody's guess. Some difference still obtains for which again clarification could have been sought, and the matter settled by issuing clear findings of fact. This is clearly unfortunate. The matter, accordingly, setting aside the impugned order, is restored to the file of the AO for verification of the reconciliation statement, i.e., with reference to the statement of accounts of the parties for the current and the earlier years and/or the underlying bills/account statements. If the amount comprising the impugned sum has been accounted for as income in an earlier year (though credited by the principal during the current year),

there is no question of the difference being treated as the assessee's income merely because tax stands deducted thereon for the current year. We are normally loathe to set aside a matter after a long period of time, but the procedure as per the law (rule 46A) is mandatory, which has not been observed. The burden to satisfy the assessing authority with regard to the veracity of its' claims is on the assessee, who has not met this by furnishing the relevant details before him. Why, again, we wonder, did it not prosecute its' appeal before the tribunal for so long? Rather, as it appears, a proper representation before the first appellate authority itself should have resolved these issues.

Continuing further, we may in this regard clarify that we are not deciding as to whether the relevant amounts stand rightly regarded by the assessee as its' income for the earlier year (or current year) or, in contradistinction, rightly allowed by the principal for the current year or, as case may be, the subsequent years, which constitutes the difference. Income, no doubt, is to assessed in the hands of the right person and for the right year. There is, however, no finding in the matter by the Revenue authorities on this. Our limited purview, therefore, is that if the relevant amounts have already been admitted as its' income by the assessee, following mercantile method of accounting, i.e., on the raising of the bills in the regular course of its' business, the same cannot suffer tax again when the credit for the same is allowed by the principal to the assessee. Tax deducted at source stands claimed by the assessee as per the TDS certificates, i.e., on Rs.26.87 lacs. The same, as per law, would stand to be allowed for the years in which the corresponding income stands to be assessed (sec. 199). We refer to this aspect as the claim for TDS is inconsistent with law considering that as per the assessee only Rs. 22.72 lacs is liable to be taxed for the current year. The assessee would stand to be allowed credit for the difference for the years in which the income has been booked by it, which we observe to be AYs. 2006-07 and 2007-08. The same should

in fact follow as a matter of course, i.e., once the AO finds that the income to that extent has been assessed for those (earlier) years. We could also direct the same, saving the assessee the tedium to move the AO for the same. So, however, considering the amount to be nominal, we only consider it proper that the assessee be allowed credit for the tax deducted at source as per the TDS certificates for the current year.

We decide accordingly.

4. Ground 2 is in respect of an addition for Rs.1,64,433 on account of the difference in the account of the principal and the assessee, i.e., in each others' books; the balance of the Principal in the assessee's books being at Rs.1,89,493 (debit) as against a credit balance of Rs.25,050 in the books of the principal. The said difference stood assessed as income in view of it being unexplained, and confirmed in appeal for the same reason, even as the assessee did furnish an account reconciliation in first appeal (PB pgs. 12-13) which, as in the case of the reconciliation statement *qua* the income accounts, was not properly examined and/or remained unsubstantiated. Before us, the assessee would contend that the assessee's books reflect a higher debit balance, i.e., receivable, from the principal. How could then the said difference, even assuming non-reconciliation of the difference, be considered as income? The argument has merit, and is accepted in principle. However, the difference could consist of both debit and credit entries, and not necessarily credit (by the principal). Further, a non-reconciliation could imply some entry/s having income implication having been omitted to be accounted for by the assessee. That is, no sure inference could be drawn without examining the nature of the difference, which may pertain to earlier year/s as well, in which case the income implication for the current year, if any, would need to be seen. We have restored the matter in respect of Ground 1 to the AO for essentially

the same reason, i.e., reconciliation of the income accounts. The adjustment/reconciliation amount *qua* the bills raised (subject matter of Gd. 1) would have a direct bearing on the account balance and the impugned difference as well. Accordingly, it is only considered proper under the circumstances to, likewise, restore the matter back to the AO for verification of the said reconciliation. The assessee shall substantiate its' claim/s, and the AO shall decide issuing clear findings of fact. We decide accordingly.

5. The next ground pertains to an addition for Rs.14,780 being the stock scrapped by the assessee, disallowed on the ground that the assessee is a C&F agent and, therefore, does not make any purchases on own account. As explained to us; true, but the Principal, at the same time, does not take back all the unsold goods, declining some, which are accordingly scrapped, debiting their cost to the operating statement for the year. This is claimed to be in fact a regular feature of the trade as some goods stand to be similarly declined and, accordingly, scrapped each year. The assessee's explanation is well taken. All that, thus, that was required by the ld. counsel, Sh. Kalia, to show us is that this explanation was indeed furnished before the AO as also, and in any case, the ld. CIT(A). We say so as both their orders contain no reference thereto; rather, stating of non-furnishing of any quantitative details in support of the claim as the reason for not admitting the assessee's claim, implying that no such explanation was furnished before them, which is indeed surprising, particularly considering that the same, as stated, constitutes a regular incident of the assessee's trade. So, however, the amount is nominal, and the expenditure reasonable. Further, the same would stand borne out by the debit of the relevant amount/s to the assessee's account by the Principal during the year, so that the same in fact impinges on the assessee's Gd. 2 as well. Subject therefore to the said amount having been charged by the Principal to the

assessee's account or otherwise referable to the principal, we direct the acceptance of the assessee's claim as we do not find any reason to doubt the explanation of scrapping of the unsold goods on their refusal to be taken back by the Principal, and which has also been taken into account in accepting the assessee's claim, subject of course to the verification aforesaid. We decide accordingly.

6. Ground 4 is *qua* disallowance of expenditure aggregating to Rs.49,002 incurred under the following heads:

(a) Advertisement	Rs. 5,650/-
(b) Freight expenses	Rs. 5,960/-
(c) Jeep expenses	Rs.37,392/-

The same came to be disallowed, and confirmed in appeal, as the same were not in terms of the agreement with the Principal (PB pgs. 46-51) required to be incurred by the assessee-agent, but by the principal. That is, there is no basis for the assessee to have incurred the same for its' agency business which is governed by the relevant agreement. The assessee's case is that nothing stops it from, in any case, incurring the stated expenditure – the genuineness of which is not in doubt, as a measure of commercial expediency.

7. We have heard the parties, and given our careful consideration to the matter.

The first thing we observe is that it had not been at any stage explained as to why, despite it being the principal's obligation, has the impugned expenditure been incurred by the assessee. Sure, it is not necessary that all expenditure incurred for the purposes of business arises out of a contractual obligation. However, here is a case of an agency business, governed by an agreement and, besides, controlled by the Principal. Then there is the overarching consideration of showing it to have been incurred wholly and exclusively for the purpose of the said business, which in

any case obtains. That is, the claimed commercial expediency is to be proved. Under what circumstances was the assessee required to incur the same has nowhere been explained. It may, again, be that the same, incurred by the assessee in the first place, was not reimbursed by the Principal and, therefore, came to be borne (and claimed) by the assessee. We say so as we observe an entry in respect of credit of the reimbursement of the expenses by the Principal in the reconciliation statement. No such explanation has been furnished at any stage, which would advance the assessee's case of commercial expediency, which would require in the minimum stating the circumstances under which the expenditure was incurred (or came to be incurred) by the assessee, as also as to why was the same not claimed from the Principal. In fact, no case of commercial expediency has been made out at any stage, including before us, where this plea is taken for the first time. The matter is principally factual and, toward which there are no facts on record. Even as the burden to prove its' return and the claims preferred thereby is on the assessee, why should, we also wonder, the Revenue authorities doubt the assessee all the time, and rather not guide him in the matter of presentation of the facts of its' case; the tax proceedings being not adversarial in nature. We do not, at this stage, particularly considering the nominality of the amount under reference, deem it proper to remit the matter to the AO for fresh determination. Taking the conspectus of the facts and circumstances into account, and with a view to settle the dispute, we direct allowance of 50% of the impugned expenditure. We decide accordingly.

8. The last and fifth ground of the appeal is in respect of disallowance of expenditure on vehicles, i.e., car, scooter and motor cycle, and telephonic devices, i.e., telephone and mobile, toward personal user, estimated at ¼ of the total expenditure, at Rs.54,150. The same stands estimated thus in the absence of the

assessee proving the user of the same as wholly and exclusively for business purposes; there being no log book for the cars, expenditure on which constitutes the bulk of the expenditure, with, rather, the AO wondering as why should the assessee require as many as four cars. The assessee has not at any stage shown the disallowance as not justified or stands estimated in excess. The total expenditure, however, is in a reasonable sum, i.e., at Rs.2.17 lacs. We, accordingly, consider it proper to estimate the non-business user at 1/6. We decide accordingly, and the assessee gets part relief.

9. We may, in parting, make another direction. Orders set aside by the tribunal with directions, in-as-much as there is no time limit for their completion, are often consigned to the back burner to linger for an indefinite time. In the present case, the set aside is for a limited purpose, i.e., to verify the correctness of the assessee's reconciliation statements *qua* some income accounts and the account balance, a matter which ought not to have traveled to the tribunal in the first place. The said verification would be with reference to the account statement for the current and the earlier (or perhaps even succeeding) year/s. The AO is directed to complete the said verification within a period of three months of the receipt of this order. The assessee, needless to add, shall extend full cooperation in the matter.

10. In the result, the assessee's appeal is allowed on the afore-said terms.

Order pronounced in the open court on February 07, 2019

Sd/-	Sd/-
(N. K. Choudhry)	(Sanjay Arora)
Judicial Member	Accountant Member

Date: 07.02.2019
/GP/Sr Ps.
Copy of the order forwarded to:
(1) The Appellant: Choudhary Enterprises, Ganpati Agro Complex,

Malout Road, Bathinda
(2) The Respondent: Income Tax Officer, Ward 1(2), Bathinda
(3) The CIT(Appeals), Bathinda
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T. True Copy

By Order