

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

**I.T.A. No. 743/Asr/2013**  
Assessment Year: 2008-09

Bir Bhola Truck Union,  
Malout Road, Bathinda

[PAN: AAAAB 1384R]

**(Appellant)**

Vs. Income Tax Officer,  
Ward 2(1), Bathinda

**(Respondent)**

Appellant by : Sh. K. R. Jain (Adv.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 22.04.2019

Date of Pronouncement: 29.04.2019

**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 02.9.2013, dismissing the assessee's appeal contesting its' assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 30.12.2010 for the Assessment Year (AY) 2008-09.

2. At the very outset, it was submitted by the assessee's counsel, Sh. Jain, that the issues arising in the instant appeal are the same as stand decided by the Tribunal per its decision in *Giddarbaha Janta Truck Union v. Asstt. CIT* (in ITA No. 660/Asr/2013, dated 28.08.2018), placing a copy of the same on record. The appellant in that case had raised the issue of mutuality as well as, in the alternative, the quantification of the income, i.e., where the surplus arising to the assessee is

deemed as income u/s. 2(45) of the Act. The tribunal did not accept the assessee's plea toward mutuality; its contract receipts being from outside persons to whom transportation services are provided. The business income was estimated at 1.5% of the gross contract receipt. The said order, accordingly, covers the instant appeal on all fours, and the assessee places full reliance thereon.

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

The assessee in the instant case, as in *Giddarbaha Janta Truck Union* (supra), is an Association of Persons (AOP), formed by individuals owning one or more trucks. It enters into contracts for transportation of goods, being admittedly formed to provide optimum gain for its members, the truck owners, by avoiding internal competition between them as well as securing collective bargaining. The assessee's case, which did not find favour with the Revenue, is that entire transportation charges on the basis of the goods receipt notes (GRNs) are passed on to the members, so that no income arises to it. The same has accordingly been assessed at 2% of the contract receipt. The tribunal in *Giddarbaha Janta Truck Union* (supra), again, did not accept the assessee's claim of no income having arisen to it as the entire receipt, including tax deducted at source – which is at 2%, is passed on to the truck owners. TDS had been deducted at the rate of 2% and, accordingly, the same, it opined, stands retained by the assessee-union. Allowing another 0.5% toward expenditure, the net profit was estimated at 1.50%. The tribunal noted several decisions by the tribunal, adopting different percentages, being relied upon by either side. In the present case, the assessee, not maintaining any books of account, has returned a net profit of Rs. 1,00,939 even as its gross contract receipt is at Rs. 369.08 lacs. It is not clear if the same includes any other income, i.e., besides contract receipt, even as it does not appear to be so as the Assessing Officer has assessed the income by estimating it, applying a rate. No

distinguishing feature/s could be pointed out by the Id. Departmental Representative (DR) when called upon by the Bench during hearing to do so.

Accordingly, following the same, it is held as under:

- (a) the assessee's contention of it being a mutual concern is rejected;
- (b) the contractual (business) income is to be assessed at 1.5% of the assessee's gross contract receipt;
- c). the other income of the assessee, if any, viz. interest, is to be assessed under the regular provisions of law; and
- d). no income is to be imputed in respect of the contribution from the members as, without doubt, to that extent, the surplus would attract mutuality. (this is clarified as it may not be that the gross receipt of Rs. 369.08 lacs includes income apart from contract receipt as well)

Reference toward this is made to paras 3 and 4 of the order by the tribunal in *Giddarbaha Janta Truck Union* (supra), which, as was the common contention of the parties, squarely covers the facts of the present case. I decide accordingly.

4. In the result, the assessee's appeal is partly allowed.

*Order pronounced in the open court on April 29, 2019*

Sd/-

(Sanjay Arora)

Accountant Member

Date: 29.04.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Bir Bhola Truck Union, Malout Road, Bathinda
- (2) The Respondent: Income Tax Officer, Ward 2(1), Bathinda
- (3) The CIT(Appeals), Bathinda
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy

By Order