

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE JUSTICE(R) SHRI P.P.BHATT, PRESIDENT AND
SHRI G.S. PANNU, VICE PRESIDENT**

ITA NO. 2149/MUM/2018 : (A.Y : 2011-2011)

ITO, Ward 30(1(4)
Mumbai.
(Appellant)

Vs. Shri Harshad A Baradia, 5/6,
Dadamiya Chawl, Quarry Road,
Opp. Lipco Co. Malad (E), Mumbai.
PAN : AEHPB 3175 L
(Respondent)

Appellant by : Shri Saurabh Kumar Rai, DR

Respondent by : Shri Bhupendra Shah, AR

Date of Hearing : 15/04/2019

Date of Pronouncement : 31/05/2019

ORDER

PER G.S. PANNU, VP :

The captioned appeal filed by the Revenue pertaining to Assessment Year 2011-12 is directed against an order passed by CIT(A)-41, Mumbai dated 1.1.2018, which in turn arises out of an order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 28.3.2014.

2. The revenue has raised the following grounds of appeal:

'1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in giving relief of Rs.70,48,413/- with respect to the addition made u/s.68 of Rs.75,48,413/- without considering the facts in the remand report and merely relying on the assessee's rejoinder.

2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the entire addition of Rs.29,24,520/- added as undisclosed receipts, without relying on the facts, that the assessee was unable to produce the evidence during the assessment proceedings.”

3. Apropos Ground No.1 of appeal, the relevant material facts, as emanated from the CIT(A)'s order, are that during the course of assessment proceedings, the Assessing Officer observed from the AIR information that the assessee has deposited cash of Rs.14,28,500/- in the account of Bank of India and Rs.44,99,000/- in the account of Kotat Mahindra Bank Ltd., respectively during the assessment year under consideration. In the profit and loss account, the assessee has shown income of Rs.1,92,71,587/- out of bus ticket booking. Hence, the Assessing Officer required the assessee to explain the sources of deposits. In reply, the assessee submitted that the receipts of the travel business were in cash and same was deposited in the banks to clear the EMI of loans taken for purchase of the buses. Thereafter the Assessing Officer asked the assessee to submit the details of bus tickets sold to substantiate the booking of bus ticket of Rs.1,92,71,587/-, which was not complied with. In view of above, the Assessing officer after considering the average fare of Volvo bus and ordinary non-AC bus, worked the total ticket collection of the year at Rs.4,05,00,000/- and issued a show cause notice to the assessee as to why the difference of Rs.2,12,28,413/- (Rs.4,05,00,000/- - Rs.1,92,71,587/-) should not treated as unexplained cash credit u/s.68 of the Act.

4. The assessee submitted that considering the distance to and fro from Mumbai to Hyderabad/Bangalore, only 12 trips per month could be performed in Volvo Buses and the ticket rate being Rs.650/- calculated the rate at Rs.1,46,25,000/- . As far as non-AC buses, it was submitted that since

the buses were 4 to 5 years old, they were used for picnics, marriages and other short trips and calculated the collection at Rs.43,20,000/-. Thus, the total bus ticket collection was calculated to Rs.1,89,45,000/-. However, in the absence of any documentary evidence, the Assessing Officer gathered the information from the internet and, accordingly, worked out Rs.2,68,20,000/- for both the Volvo and ordinary buses and added the differential amount of Rs.75,48,413/- (Rs.2,68,20,000/- - Rs.1,92,71,587/-) to the income of the assessee u/s.68 of the Act.

5. On appeal, the CIT(A) called a remand report from the Assessing Officer, wherein, it is stated as under:

"9.1 Before the CIT(A) the assessee has submitted certain documents wherein, it stated that two of the vehicles were not put into use and a No use certificate has been issued by the RTO, Thane.

9.2. In the affidavit dated 18.3.2014, the assessee has stated that all documents are lost and they did not have details to submit. The assessee did not submit any details at that time. Further the assessee has stated in his letter dated 10th August, 2015 submitted before the Learned CIT(A) that it was due to paucity of time.

9.3 Here, it is to be noted that if this document could be found by the assessee, then other documents should be some where with the assessee which assessee deliberately wanted to hide. The assessee has given a false affidavit stating the documents are missing.

9.4 A letter dated 18.08.2017 was issued and served on the assessee to submit the details called for as per the letter by 24.08.2017. On 28.08.2017, the assessee's son Shri Ritesh Barodia who now looks after the business telephoned and stated that due to some calamity in the family front, he will be coming to office on 01.09.2017 and asked for some time. The same was given to him. On 01.09.2017. Shri Ritesh Barodia attended and submitted a letter dated 24.08.2017. The case was heard. The assessee's reply cannot be relied up on due to following reasons:

"9.5 As per the submissions made by the assessee before the Ld.CIT(A) Mumbai, the bus number MH-04-G-8090 was not in use from

January, 2011 April, 2011. That means for the A.Y. 2011-12 this bus was not in use for three months January, 2011 to March 2011. And bus no: M04-G-8081 was not in from February, 2010 to June 2010. That means for A.Y 2011 the F.Y year being 2010-11 starting form 01.04.2010 to 31.03.2011, this bus was not in use for period of 3 months only and not for 5 months.

9.6 Further, the assessee has also submitted copy of tickets. Ticket no. 132(by Eagle Travel Agency dated 05.09.2010 journey date 08.09.2010 for total sea 2, where in the rate is mentioned at Rs. 1200/- for travelling from Mumbai Hyderabad. Ticket number 69502 issued by Neeta Volvo Bus on 08.02.2011 for Rs. 1900 total seats 3 seat No E, F, G from Sion to Hyderabad and Ticket no 155(issued on 02.05.2010 for Rs. 1300 for 2 seats Y and Z.

9.7 It is seen from these three copies of tickets submitted by the assessee on three different dates and months i.e. September 2010, May, 2010 and February, 2011, where in all the charges are above Rs.1000/- (i.e. Rs.1200/-, Rs1900/- and Rs.1300/-). Whereas as the AO has taken at an average of Rs.1000/-. The assessee submitted copy of three bills for three different dates wherein the 2 bills amounts for 2 seats and one bill for 3 seats have been mentioned. The assesses should have produced at least four to five months bills or at least one month bills to take an average rate. By submitting copies of 3 bills the assessee has asked the AO to arrive at the magic figure of Rs. 600 to 700 per ticket. From the submissions of the assessee the claims of average ticket price at Rs. 600 to 700,which cannot be accepted. Further from the information received from internet on Computer, it was seen that the fare of the Volvo Bus Travel between Mumbai to Bangalore of Karnataka State Road Transport Corporation was @ Rs. 1020perpassenger. Even other travel agencies like Sharma Travel, Konduskar.Travel charged the same rate with some increase in rate during the summer and Diwali vacation for Volvo Bus.

9.8 However, keeping in view of the assessee's claim for no use certificate for the two vehicles in question, the collection of tickets sold during the year for AC Volvo buses is recalculated as under as reduced by number of months the vehicles not put into use: 45 seats x Rs. 1000 per seat x 2 no. of bus Rs. 90,000 Rs. 9000 X 250 (no. of trips) = 2,25,00,000 (250 trips = 250 days which isles than 9 months.)

9.9 From the above it is clear that the AO has already taken into account the no use certificate and accordingly has taken the no. Of days at 250 (30 days x 9 no. Of months =270) and further given another 20 days for repair work etc.

9.10 Therefore, the total receipt of bus ticket booking income of the assessee during the F.Y. 2010-2011 is Rs.2,68,20,000/- = Rs.2,25,00,000 + Rs.43,20,000 (for two non a.c. buses)

9.11. Accordingly, the difference in total receipt of bus ticket booking income shown by the assessee in P&L account and working done is as

under:

Rs.2,68,20,000 (-) Rs.1,92,71,587/- = Rs.75,48,413/-.
Therefore, the undisclosed income of Rs.75,48,413/- as cash credit of the assessee and disallowed /s.68 of the I.T.Act, 1961 is fully justified."

6. The remand report of the Assessing officer was furnished to the assessee and the assessee has submitted rejoinder to remand report. After considering the remand report and the rejoinder, the CIT(A) allowed part relief to the assessee by observing as under:

"11. I have carefully gone through the submissions of the appellant and the findings of the Assessing Officer in the assessment order and the remand report. My observations are as under:

11.1 In my considered opinion, the final outcome of this appeal depends upon few factual aspects that need to be resolved. Firstly, whether the Volvo buses of the appellant were plying between Mumbai and Hyderabad or Mumbai and Bangalore or mixed. Secondly, for how many no. of days (average) in a month, the buses have travelled between Mumbai or Hyderabad/ Bangalore i.e., time taken in one trip between two destinations. Thirdly, what is the rate for a trip between Mumbai and Hyderabad/Mumbai in a Volvo bus. In the subsequent paragraphs, these issues been discussed based on facts and evidences brought on record and after 'considering the conclusion drawn by the AO and as argued by the Ld. AR of the /appellant

11.2 The first issue to be decided is whether the two Volvo buses of the appellant were plying between Mumbai and Hyderabad or Mumbai and Bangalore or mixed. Through out the assessment proceedings, the appellant has not taken a definite stand on the destination of the two volvo buses during the year under consideration. In the absence of proper records maintained and produced before the AO during the assessment proceedings, the AO has assumed that the buses are plying between Mumbai and Bangalore. It is only during the appellate proceedings, the appellant has submitted a certificate dated 22.05.2015 from Neeta Travels about the use & destination of the two volvo buses. The content of the certificate is as under:

` This is to certify that during the year 2010-11 Volvo buses No;- MH 04G8090 and MH 04G8081 owned by Mr. Harshad A. Boradia were operating on Mumbai-Hyderabad route as daily bus service as we were the main booking agents through whom seats were booked. The average ticket price was between Rs. 600 to 700 depending upon the season."

This certificate suggests that the 2 Volvo buses have travelled to Hyderabad during the period under consideration. Although, the said certification was made available to the A.O. during remand proceeding the A.O. did not take it into cognizance while preparing the remand report. Accordingly, no conclusive finding has been given by the AO in the remand report with respect to destination of the two Volvo buses. By adopting the rate of Rs. 10007- per trip based upon similar rate of travel of Karnataka State Road Transport Corporation, the AO has implied that all the trips are between Mumbai and Bangalore notwithstanding the certificate produced by the appellant as mentioned above. From the assessment order and the report received during remand proceedings, I find that no reasoning has been given by the AO as to why all trips should be treated as between Mumbai and Bangalore and not Mumbai and Hyderabad or to both destination i.e., on some days to Bangalore and on few other days to Hyderabad. I find that the AO has not even bothered to examine Neeta travels when the matter was remanded back to him. He is completely silent on the certificate produced by the appellant.

11.3 The issue of determination of destination can be seen from another angle. It is an undisputed fact that the distance between Mumbai to Hyderabad is 707 Kms. As seen from the information available in the public domain, the travel time is around 13-14 hours for a luxurious bus with one or two halts of 1 to 2 hours for passengers and drivers for food and refreshments and depending upon the traffic situation. Therefore, more than one trip is not possible in a day by bus. Similarly, the distance between Mumbai to Bangalore is around 1000 kms. It takes around 18-20 hours for a Volvo bus to cover this distance with at least 2 halts of 1 hour each for refreshments. Hence, one bus can optimally cover 2 trips (one going and one returning) in 3 days. So, for Bangalore trip, it will be 0.67 trip per day by one Volvo bus.

11.4 Now the next controversy to be resolved is the rate of one passenger seat in the Volvo bus for Hyderabad trip or Bangalore trip. The appellant has taken the rate of Rs. 650/- per trip per passenger for Hyderabad trip. The same is substantiated by the certificate of Neeta travels. The rate relates to Hyderabad journey, Initially, no documentary evidence was submitted. Later on, during appellate and remand proceedings, few bus tickets on sample basis of different travel agencies for the year 2010 are submitted to demonstrate that the rate per seat in a Volvo bus for Hyderabad journey was between Rs. 600 to Rs. 650. Even the certificate of Neeta travels, as mentioned in the preceding paragraph specifically states that the ticket price was between Rs. 600-650 depending upon the season. I do not see any reason for the AO to reject/omit to consider these comparable rates for Hyderabad journey when he is unable to bring on record higher comparable rate for Hyderabad journey except stating that more no. of sample tickets should have been produced by the appellant or by relying upon Karnataka State Road Transport Corporation rate of Rs. 1020/- for Bangalore journey. In my considered opinion, even the rate

of Rs. 1000/- for Bangalore journey does not pertain to the year 2010 since as stated by the AO, the same was extracted from the internet during the assessment proceedings concluded in the month of March, 2014. In this regard, I find that at the time of passing this order in January, 2018, internet shows rate for a Volvo bus seat for Mumbai-Hyderabad journey at Rs. 800/-. Therefore, the rate in the F.Y. 2010-11 would certainly be less, In my considered opinion, the AO should have made necessary local enquiries including examining Neeta Travels, at the remand stage, to ascertain the actual rate for Hyderabad/Bangalore journey in the F.Y. 2010-11. In the absence of any local enquiry and supporting evidences brought on record, the AO's action in applying flat rate for all journeys undertaken by two Volvo buses at Rs. 1000/- cannot be accepted on two counts. It does not represent the actual rate prevailing for Bangalore journey in F.Y. 2010-11. It has not been established by the Assessing Officer that all the journeys are undertaken for Bangalore and not to Hyderabad.

11.5 The next question is what should be the average run days for the buses during the F.Y. 2010-11. The AO has assumed average 250 run days for each bus in the relevant year. During appellate proceedings, no use certificates of two buses issued by the RTO, Thane are produced. These are examined by the AO in the remand proceedings. The AO has stated that bus no. 8090 was not in use from January, 2011 to April, 2011 i.e., for three months in the F.Y. 2010-11. Similarly, bus no. 8081 was not in use from February, 2010 to June, 2010 i.e., three months in the relevant year. Thus, both the buses were available for 270 days in F.Y. 2010-11. Hence, 250 days of actual use cannot be ruled out if 20 days are kept for breakdown, repairs etc. In the rejoinder, the Ld. AR has also not objected to this 250 days of run for both the buses in the year.

11.8 Now coming to the final question of calculation of fare received during the year from the vehicles owned by the appellant. The AO has calculated the collection of tickets from the AC Volvo buses for 250 days of use in the following manner:

45 seats x Rs. 1 000 per seat x 2 no. of bus = Rs. 90,000/-
Rs. 9000/- X 250 (no. of trips) = Rs. 2,25,00,000/-

Thereafter, considering the journey undertaken by two non-AC buses (for which there is no dispute), the total receipt of bus ticket booking income of the appellant during the F.Y. 2010-11 has been worked at Rs. 2,25,00,000/- + Rs. 43,20,000/- (for two none AC buses) = Rs. 2,68,20,000. Accordingly, the difference in the total receipt of ticket booking income as computed by the AO arrives at Rs.75,48,413/- (Rs. 2,68,20,000/- - RS.1,92,71,587/-).

11.7 However, the above computation has certain inherent lacunas as explained in preceding paragraphs. Briefly these are

- (i) It has not been established by the AO that the journeys undertaken by buses are to Bangalore. Hence, the rate of Rs. 1000/- per seat for Volvo bus for Bangalore destination cannot be applied for each day's journey for both the buses.
- (ii) As discussed in para 11.3, one completed trip every day by a Volvo bus from Bombay to Bangalore or vice versa is not possible. The most appropriate factor for Bangalore journey is 0.67 completed journeys in a day, even if we consider that the destination is to Bangalore. For Hyderabad journey, there will be one completed journey in a day.

11.8 In such a scenario, I agree with the Ld. AR that even if it is assumed that the buses were operated on Mumbai to Bangalore route with the rate of Rs, 10007- as adopted by the AO, the receipt from the two Volvo buses in the year will be –

45 seats x Rs. 1000 x 250 days x 0.67 trips per day x 2 buses = Rs. 1,50,75,0007-.

For Hyderabad journey, the figure will be

45 seats x Rs. 650 x 250 days x 1 trips **per** day x 2 buses = Rs.1,46,25,0007-.

11.9 If the undisputed receipt of Rs. 43,20,0007- for two none AC buses is added to the aforesaid receipts from two Volvo buses, the total works out to **Rs.** 1,93,95,0007- for all Bangalore journeys and Rs. 1,89,45,0007- for all Hyderabad journeys. The latter is the amount taken by the appellant during assessment proceedings. It is also claimed by the appellant that the balance amount of Rs. 3,26,5877- on the receipt side of the P & L A/c relates to RTO consultancy business income.

11.10 Summarising the aforesaid discussion, in my considered opinion, some addition is definitely warranted to gap certain uncertainties/lacunas left in the observations of the AO and in producing complete evidences by the appellants regarding actual no of days the journey have been undertaken and the receipts received from it. Looking to the overall facts and circumstances of the issue involved, an addition of Rs. 5,00,000/- to the total receipt offered by the appellant from bus transportation business in the P & L A/c is sufficient and justified instead of impugned addition of Rs. 75,48,4137-. Thus the appellant gets a relief of Rs. 70,48,4137-. Thus, the ground of appeal no. 2 is partly allowed.”

7. Not satisfied with the order of the CIT(A), the revenue is in appeal before us.

8. At the time of hearing, Id D.R. appearing on behalf of the revenue supported the order of the Assessing officer whereas the Id A.R. supported the order of the CIT(A).

9. Having heard both the sides, we find that the CIT(A) has allowed part relief after receiving the remand report from the Assessing officer. We find that no material has been brought on record by the revenue to establish the actual number of days of journey undertaken by the buses owned by the assessee and that receipts out of the journey. Further, Id D.R. could not point out any specific error in the order of the CIT(A). Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

10. Ground No.2 relates to addition of Rs.29,24,520/- on account of credits in the bank accounts of the assessee.

11. The Assessing Officer found that the assessee had deposited cheques of Rs.8,51,723/- in the Bank of India, Malad East Branch and Rs.20,72,797/- in Kotak Mahindra Bank Ltd., totalling to Rs.29,24,520/-. The Assessing Officer did not accept the contention of the assessee that the cheques were received in the line of business as an RTO consultant and commission agent and the business receipts from sale of tickets are in cash that the income was duly accounted for and added the same to the income of the assessee.

12. On appeal, it was stated by the assessee that during the relevant assessment year, the assessee was engaged as an RTO consultant like getting permits issued for vehicles, getting vehicles transferred, paying

of road taxes, insurance etc for which an amount of Rs.3,26,587/- was offered against the total income of Rs.29,24,520/-.

13. The CIT(A) deleted the addition made by the Assessing officer by observing as under:

"15.1 The AO has made the impugned addition on the single premise that in the submission, the appellant has stated that all business receipts i.e., ticket receipts from buses are in cash. Hence, whatever cheque deposits exist in the bank accounts, will automatically represent the appellant's unaccounted income. Accordingly, entire cheque deposit of Rs.29,24,520/- was added to the total income of the appellant. In my opinion, the basis of this premise is completely wrong and unacceptable. Once the bank accounts are accounted for and the receipts are considered for the turnover of the business of the appellant, there is no reason for considering the cheque amount as unaccounted receipts. Before the AO, it was explained that the receipts include RTO's consultant fee like getting permits issued for vehicles, getting vehicles transferred, paying of road taxes, insurance etc., that included his charges plus the RTO charges, taxes etc from the customer. The appellant has also produced before the AO the copies of relevant ledger accounts, form 26AS where the receipts and TDS deducted are shown. However, the AO has completely disregarded these evidences brought before him during assessment proceedings. Since the impugned amount was credited in cheques, it was easy for the AO to enquire from the persons issuing the cheques and to test its genuineness before commenting on it's accountability. In this regard, I agree with the Ld. AR that the AO has neither rejected the books of accounts nor brought any material on record to establish that the amount credited in cheques, in the banks, was unaccounted money of the appellant. Even during the remand proceedings, the AO did not carry out any verification or brought any adverse material to put forward his point."

14. We have heard the rival submissions and perused the record of the case. We find that the observation of the CIT(A) that once the bank accounts are accounted for and the receipts are considered for the turnover of the business of the appellant, there is no reason for considering the cheque amount as unaccounted receipts was not controverted by the Id D.R. We also find that the assessee has produced before the Assessing officer the copies of relevant ledger accounts, Form 26AS where the receipts and TDS deducted are shown, which

evidences were completely disregarded by the Assessing officer. Ld D.R. also could not bring on record that the amount credited in cheques in banks was unaccounted money of the assessee. Hence, we do not find any error in the order of the CIT(A), which is hereby confirmed and the ground of appeal of the revenue is rejected.

15. In the result, appeal of the revenue is dismissed.

Pronounced on 31/05/2019

Sd/-
(JUSTICE P.P.BHATT)
PRESIDENT

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Mumbai, Date : 31/05/ 2019

B.k.Parida, Sr. PS

Copy to :

- 1) The Appellant: ITO, Ward 30(1(4), Mumbai
- 2) The Respondent: Shri Harshad A Baradia, 5/6, Dadamiya Chawl, Quarry Road, Opp. Lipco Co. Malad (E), Mumbai.
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai