

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.366/Bang/2019
Assessment year : 2010-11

Shri Mohammed Maqsoor Ali, Prop. M/s. HASS Trading and Transportation, H.No.1-4-4, V.V. Giri Road, Raichur – 584 101. PAN: AEAPA 3024J	Vs.	The Income Tax Officer, Ward 1, Raichur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok A. Kulkarni, Advocate
Respondent by	:	Shri Satyasai Rath, Addl CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

This appeal by the assessee is against the order dated 16.07.2018 of the CIT(Appeals), Gulbarga relating to assessment year 2010-11.

2. The only issue that arises for consideration in this appeal is as to, whether the CIT(Appeals) was justified in confirming the addition of Rs,19,01,830 to the total income of assessee by estimating the income of assessee from transport business @ 8% of the gross receipts of Rs.2,19,66,114 (wrongly mentioned as Rs.2,37,72,900 in the order of assessment).

3. The facts are that the assessee is an individual, engaged in the business of transportation. It is not in dispute that the transportation charges received by the assessee as per the profit & loss account was a sum of Rs.2,19,66,114. It was the plea of assessee that assessee was working as a facilitator and providing lorries for transportation. The assessee earned only a commission of 2% and therefore declared a sum of Rs.1,91,500 as income from business of transportation. The AO called upon the assessee to submit documentary evidence like bills/vouchers to prove that assessee was working as a commission agent and the amounts have been paid to the lorry owners. Since such evidence was not filed by the assessee, the AO applied 8% profit rate on the total aggregate of Rs.2,37,72,900 reflected in the bank statement of assessee and estimated profit of the assessee at Rs.19,01,830. This was added to the total income of the assessee declared in the return of income.

4. Before the CIT(Appeals), the assessee reiterated his case that estimation of income as done by the AO was unreasonable. The said objection was, however, rejected by the CIT(Appeals) by holding that without bills & vouchers in respect of expenditure incurred, it is not possible to verify the genuineness of the same. On this reasoning, the CIT(A) confirmed the order of AO.

5. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal. I have heard the rival submissions. The Id. counsel for the assessee submitted that the assessee earned only 2% of the receipts in the form of transportation charges of Rs.2,19,66,114, which was a sum of Rs.4,40,006. From the gross commission earned, the assessee deducted expenses of Rs.2,48,506 and declared the net profit from transportation business of Rs.1,91,500. The CIT(A) confirmed the order of AO only because there was absence of bills & vouchers in respect of expenditure incurred. The overall receipts from the transportation

business and transportation charges paid and the mode of operation of business of assessee as claimed by the assessee was not disputed either by the AO or the CIT(A). It is also a fact that the assessee did not own any vehicles in the transportation business. It was therefore submitted by him that the AO ought not to have made the impugned addition and if at all some addition has to be made, it can only be disallowance of expenses, which was claimed by the assessee at a sum of Rs.2,48,506. He pointed out that the expenses claimed by assessee were reasonable and if at all, only a part of expenses can be disallowed for want of bills & vouchers.

6. The Id. DR relied on the order of CIT(Appeals).

7. I have given a careful consideration to the rival submissions and I find merit in the submissions made on behalf of assessee. The admitted position is that income in the form of transportation charges has not been disputed by the AO. He has disputed only the expenses. Expenses also include transportation charges paid by the assessee which forms about 98% of the transportation charges received by the assessee. The assessee has produced before the AO details of transportation charges paid by him and these are contained in pages 105 to 134 of the assessee's PB-1 filed before us. The details of other expenses have also been filed. While it may correct to say that the action of the AO in resorting to a process of estimation of income of assessee by disregarding the book results may be justified, but there appears to be no basis for estimating income @ 8% of the transportation charges received by the assessee. Apart from that, the AO has also taxed the sum of Rs.1,91,500 declared as income from transportation charges. I am of the view that the estimation of income by the AO is excessive. All facts considered, estimation of 3% of the receipts from transportation charges would meet the ends of justice, which will be a sum of Rs.6,58,983. The AO is directed to allow indirect expenses as claimed by the assessee of Rs.2,48,506. Thus, estimation of

income from transportation business should be a sum of Rs.4,10,477. This sum shall be taxed as income from business in place of Rs.1,91,500 declared by the assessee in return of income and the sum of Rs.20,93,330 determined as total income by the AO.

8. In the result, this appeal of the assessee is treated as partly allowed.

Pronounced in the open court on this 28th day of June, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 28th June, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.