

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No 11/Ind/2018
Assessment Year 2014-15
PAN : AAFFT3777N

M/s. The Hind Ratan Logistics,
TS-47, New Loha mandi,
Navlakha Main Road,
Indore

V/s ITO-5(3),
Indore

(Appellant)

(Respondent)

Revenue by : Shri R.S. Ambedkar, Sr.DR

Assessee by : Shri Adik Bansal, CA

Date of Hearing : 22.10.2019

Date of pronouncement : 31.10.2019

ORDER

PER SHRI MANISH BORAD, A.M.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Years 2014-15 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'), Indore

dated 22.09.2017 which is arising out of the order u/s 143(3) dated 30.11.2016 framed by ITO-5(3), Indore.

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of truck plying and providing transport services. Income of Rs.2,32,322/- declared in the income tax return filed on 8.10.2014. Case selected for scrutiny through CASS followed by issuing of notices u/s 143(2) of the Act. During the course of assessment proceedings Ld. A.O observed that there were additions to the capital account of the partners. The source of capital was asked. Assessee furnished the reply but they were not sufficient to convince the Ld. A.O, therefore he made the addition of Rs.30,50,000/- for unexplained capital. Ld. A.O. also observed that there is a mismatch in the gross receipts shown by the assessee in the Profit & Loss Account as against the booking commission received by the assessee. Freight receipts from five trucks owned by the assessee were also not appearing in the profit and loss account. The assessee was show caused. It furnished the submissions contending that only the net receipts have been shown. Books of accounts are audited. Ld. A.O however was not satisfied and he rejected the books of accounts observing various

defects and made the addition of Rs.18,94,514/- by applying the notional profit rate @5% on the gross receipts of Rs.3,78,90,273/-. Ld. A.O also made addition u/s 44AE of the Act at Rs.3,00,000/- towards the income of the five trucks plyed during the year. After making addition of Rs.52,44,514/- income assessed at Rs.54,76,836/-.

3. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed on any of the grounds.

4. Now the assessee is in appeal before the Tribunal raising following grounds of appeal;

1. That on the facts and circumstances of the case, the AO erred in making the addition of Rs. 30,50,000/- on account of unexplained credit in the capital account of the partners without properly appreciating the facts that the assessee has offered all relevant explanation for the same. The CIT (A) also erred in maintaining the addition.

2. That on the facts and circumstances of the case the AO erred in rejecting books of . accounts U/s 145 of the IT Act, 1961 and applied a notional profit percentage of 5 on the booking commission of Rs.3,78,90,273/ -, making an addition of Rs.18,94,514, despite the fact the books of accounts are duly maintained and audited. The CIT (A) also erred in maintaining the addition.

3. That on the facts and circumstances of the case the AO erred making an addition of Rs.3,00,000/- U/s 44AE of the IT Act, 1961, without appreciating the fact that the books of accounts are duly maintained and

audited. The CIT (A) also erred in maintaining the addition.

4. That on the facts and circumstances of the case the AO erred in calculating assessed income. Income shown in the return of Rs.2,32,322/- was not deducted from the additions made as age of profit, as the assessment order was passed through restoring the provisions of section 145 of the Income Tax Act.

4. Appellant reserve his right to add, alter or amend any grounds of appeal at the time of hearing or before.

5. Apropos to Ground No.1 for unexplained credit of Rs.30,50,000/- in the capital account of the partners Ld. Counsel for the assessee submitted that the partners were having sufficient funds in their hands and the alleged amount was received by the partners from outstanding sundry debtors standing in the individual balance sheet of the partners. These sundry debtors are the amount receivable against lorry receipts which are discounted by the partners, amount paid to the drivers and on the due date of the lorry receipts these amounts were to be collected from the persons availing the transport services. Ld. Counsel for the assessee also referred to the paper book wherein the balance sheet of both the partners are placed for the preceding financial year and current financial year to support the source of capital introduced by the partners.

6. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities and also submitted that no such details of lorry receipts were placed before the lower authorities.

7. We have heard rival contentions and perused the records placed before us. Through Ground No.1 the assessee has challenged the finding of Ld. CIT(A) confirming the addition for unexplained credit in the capital account of the partners at Rs.30,50,000/-. It has been submitted before us that the partners namely Shri Puvinder Pal Ratan and Smt. Ravinder Kaur Ratan in their individual capacity are earning income from finance business. In this business they discount the lorry receipts, pay the discounted amount to the Drivers and on the due date which is normally 2 to 5 days from the date of lorry receipts, recover the amount from the party for which material was delivered. Reference was made to the balance sheet of both the partners. In paper book page-46 in the balance sheet as on 31.3.2013 of Smt. Ravinder Kaur Ratan and Shri Puvinder Pal Ratan the outstanding sundry debtors (bills in hand) are Rs. 19,18,250/- and Rs.23,59,479/- respectively. The assessee's claim is that the source of capital introduced during the year is majorly

from liquidating the outstanding debtors as on 31.3.2013.

8. We however find that no specific details of the sundry debtors outstanding at the close of the year 31.3.2013 were filed before the Ld. A.O nor any justification was given about the nexus of the cash deposited in the bank account of partnership firm with the available cash in hand with the partners.

9. In our considered view this issue needs detailed examination by the Ld. A.O and therefore the issue raised in Ground No.1 is set aside to the file of Ld. A.O for afresh examination which will be in the interest of both the parties. Assessee is also directed to furnish complete details of sundry debtors outstanding in the balance sheet of the partners as on 31.3.2013 and 31.3.2014, sample copies of lorry receipts and also the cash flow statement showing the amount received against the exchange of lorry receipts. Needless to mention that proper opportunity of being heard should be provided to the assessee. In the result Ground No.1 is allowed for statistical purpose.

10. Apropos Ground No.2 relating to rejection of books of accounts and application of notional percentage 5% on the booking commission

of Rs. 3,78,90,273/-, Ld. Counsel for the assessee submitted that the books are duly audited u/s 44AB of the Act and in this kind of business usually in the Profit & Loss account, the net booking commission amount is disclosed. Assessee is maintaining complete details of revenue and expenditure of the offices running at Indore, Ludhiana and Pune. Booking are done through Ludhiana office but the revenue are shown in the books of respective offices. Assessee also owns five trucks and income from running of these trucks were also disclosed. He prayed that the lower authorities erred in rejecting the books of accounts and applying notional profit on the gross booking commission during the year.

11. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

12. We have heard rival contentions and perused the records placed before us. Through Ground No.2 assessee has challenged the action of Ld. A.O of rejecting books of accounts u/s 145 of the Act and applying the notional profit rate of 5% on the booking commission of Rs.3,78,90,213/- thereby making addition of Rs.18,94,514/-. We observe that the assessee vide letter dated 3.10.2016 filed before the

Ld. A.O during the course of assessment proceedings gave details of truck wise revenue and expenses, details of station wise freight and expenses. This reply is appearing on page-12 of impugned assessment order. As per this reply the gross receipts from running of five trucks owned by the assessee is Rs.66,34,388/- and after deducting the expenses of Rs.61,35,617/- the net receipts have been shown as Rs.4,98,771/-. This net receipt is before claiming the depreciation on trucks at Rs.18,32,330/-, which the assessee has claimed in the audited Profit & Loss account. It means that if the depreciation of Rs.18,32,330/- is reduced from the net receipts of Rs.4,98,771/-, there is a gross negative income from running of trucks at Rs.13,33,559/-.

13. As regards the freight income, the gross freight income from all the three offices stations has been shown by the assessee at Rs. 3,78,90,253/- and against it gross expenses towards Hammali & cartage, lorry hire, crossing freight, discount, local freight and service tax is incurred which total to Rs.3,10,73,573/-, thus there is gross income of Rs.68,16,680/-. When we compare these details which the assessee has filed before the Ld. A.O with the audited Profit & Loss

account, we find that under the head income the booking commission amount is shown at Rs.1,00,04,466/-, no separate amount is shown for lorry receipts i.e. receipts from the five trucks owned by the assessee. The net income before distributing the remuneration to the partners is at Rs.8,03,738/-. There is no whisper in the Profit & Loss account about the total turnover, gross receipts of the trucks owned by the assessee, loss incurred in running the trucks. It has been contended by the Ld. Counsel for the assessee that the figures have been consolidated but even if they have consolidated the details should appear in schedules attached to the balance sheet and Profit & Loss Account. Perusal of the paper book shows that no tax audit report has been filed, no such schedules are attached relating to heads appearing in the Profit & Loss Account. Even though the assessee was provided sufficient opportunity by the Ld. A.O to give necessary details but the same remain unfulfilled at the end of the assessee. Therefore in our considered view Ld. A.O has rightly applied provisions of Section 145 of the Act and rejected the book results shown by the assessee.

14. However with regard to application of notional profit of percentage of 5% on the booking commission and making addition for

Rs.18,94,514/-, in our view notional rate should have been applied on the total turnover of the assessee which in this case is Rs. 4,45,24,641/- (Gross receipts from trucks at Rs. 66,34,388/- and gross freight receipt of Rs.37,89,253/-). Further in our considered view applying of 5% profit rate is much higher and therefore in the interest of justice and fair play we direct the Ld. A.O to apply the net profit rate of 3.5% on the gross turnover of Rs. 4,45,24,641/-. By applying net profit rate of 3.5% the amount on net profit would arrive at Rs. 15,58,362/-. This net profit shall be deemed to have been arrived after claiming all the expenses including depreciation except remuneration allowable to partners. We also direct the Ld. A.O to compute the remuneration allowable to the partners as per the provisions of law and give the deduction of the same against the profit computed at Rs.15,58,362/-. Ld. A.O is also directed to give the deduction of the net profit of Rs. 2,32,322/- which stands already disclosed by the assessee in the income tax return filed by it. The remaining amount shall the addition sustained in the hands of the assessee. Further our this decision of adjudicating of Ground No.2 shall not be considered as a precedence for the subsequent years. In the result Ground No.2 of the assessee's appeal is partly allowed.

15. Apropos Ground No.3 relating to addition u/s 44AE of the Act at Rs.3,00,000/-, we observe that since we have already applied net profit rate on the total turnover of the assessee including freight receipts from running trucks, making a separate addition u/s 44AE of the Act is uncalled for and therefore same is directed to be deleted. In the result Ground No.3 of the assessee is allowed.

16. Apropos Ground No.4 wherein the assessee has challenged the calculation of assessed income and submitted that the income disclosed by the assessee at Rs. 2,32,322/- was not deducted from the addition, we find force in the contention of the assessee. While adjudicating Ground No.2 in the preceding paras we have already given direction to give set off of the total income of Rs. 2,32,322/- shown in the Income Tax Return and thus it takes care of assessee's Ground No.4 and therefore the same stands allowed.

17. Ground No. 5 which is general in nature which does not need any adjudication.

18. In the result appeal of the assessee is partly allowed for statistical purpose.

The order pronounced in the open Court on 31.10.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 31 October, 2019

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt. Registrar, ITAT