

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA No.520/Coch/2019
Assessment Year:2012-13

M/s. Trans Marine Corporation, No. VIII/1436(5), Royale Plaza Building, Bridge Road, Aluva, Ernakulam-683 101.	The Income Tax Officer, Ward- 2(5), Non Corporate, Kochi.
(Assessee -Appellant)	(Revenue-Respondent)

Assessee by	Shri Kalpesh Shah, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	28/11/2019
Date of pronouncement	29/11/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kochi dated 26/07/2019 and pertains to the assessment year 2012-13.

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

1. Confirming rejecting of the Books of Account by Assessing Officer invoking the provisions of section 145(3) of the Act.

2. Confirming action of Assessing Officer passing the order u/s. 144 of the Act, clearly overlooking the fact of documents submitted before the Ld. CIT(A) and various details and documents having been furnished before the Assessing Officer and when called for including:

3. Sustaining the addition of Rs.28,98,540/- by estimating Gross Profit at 9%, calculated on adopted turnover of Rs.9 crores.

4. Without prejudice and assuming though not admitting about the income of the appellant requiring to be determined on estimation, not appreciating the fact that it should have been quantified on the basis of actual turnover instead of gross receipts which include reimbursement of credits as well.

3. The facts of the case are that the assessee is a clearing and forwarding agent. The assessee filed its return of income declaring total income of Rs.1,02,650/-. Before the Assessing Officer, the assessee filed the balance sheet alongwith the P&L account. The P&L account of the assessee showed expenditure of Rs.12,55,13,091/- The Assessing Officer asked the assessee to produce supporting documents towards the claim of expenditure. It was stated by the assessee that it was re-imburement of expenses received by the assessee at Rs.13,06,08,857/- which was included as income. The assessee furnished the income and expenditure statement relating to reimbursement of income and expenses pertaining to various branches as under:

Particulars	Amount	Amount	Amount	Total
	Chennai	Ahmedabad	Mumbai	
Reimbursable income	120204258.2		5292267.8	125496526
Handling/Agency income	4099764.5	28,96,920	56,800	70,53,484.5
Total	124304022.7	28,96,920	53,49,067.80	132550010.5
Reimbursable Expenses	120204258.2	0	52,92,267.80	125496526.0
Other direct Expenses	482550.8	13,69,473		1852023.8
Gross Profit	3617213.7	56,800	56,800	52,01,460.7

It was explained that there were some discrepancy in the audited accounts filed and informed that the actual gross receipt and expenses shown in the P&L account was not correct, the actual receipt and expenses was less than the amount shown in the audited P&L a/c. The Ld. AR contended that the actual turnover and expense range of 8 crs to 7 Crs. The assessee was asked to identify the area in which

discrepancy occurred but they were not able to explain or identify entries in which duplication occurred or to file a statement showing the same but only produced ledger copy of some account heads stating that the entries are cross verifiable.

3.1 The assessee had not filed a revised P&L a/c audited balance sheet and also not able to explain a large part of expenses of Rs 12,54,07,397/- i.e. around Rs 5 Crs, claimed in the return of Income with evidences, it is mandatory to keep the necessary vouchers and bills for any expenses claimed by the assessee and to produce them for verification. The assessee was simply stating that there were contra entries in his books without showing any particular entry. Moreover, assessee's returned income was only 0.07% of the total receipt and Gross profit was only 3.98%. The assessee stated that whatever be the turnover, the net income declared at Rs. 1,02,650/- in the return of income will not change. In these circumstances, the Assessing Officer observed that a fair and accurate income of the assessee for the previous year relevant to the AY 2012-13 cannot be worked out.

3.2 Therefore, for the reasons stated above, the Assessing Officer was not satisfied about the correctness and completeness of the account of the assessee and hence, books results of the assessee were rejected and assessment was completed in the manner provided in section 144 of the Income tax. The Assessing Officer estimated the income of the assessee comparing the gross profit ratio of the assessee itself for the A Y 2011-12 by making addition on G.P. For arriving at the

correct figure of GP addition, the assessee's gross profit ratio of the itself for the previous year relevant to A Y 2011-12 was taken into account which is 9.68% of the total receipt of Rs 2,11,61,937/-. Considering this, 9% was applied in this year. Therefore, GP was worked out at 9% of Rs 13,06,08,857/-, the gross receipt shown in the return oi income which was worked out at Rs 1,17,54,797/-. Therefore, the gross profit difference Rs 65,53,337/- (Rs 1,17,54,797-52,01,460) was added to the total income returned.

4. On appeal, the CIT(A) adopted the turnover at Rs.9 crores and then GP rate of 9% was applied on the same in order to work out the income of the assessee. On this basis, the CIT(A) estimated the GP at Rs.81,00,000/- as against declared GP of Rs.52,01,460/- leaving a difference of Rs.28,98,540/-. Thus, out of the total addition of Rs.65,53,337/-, addition of Rs.28,98,540/- was sustained and balance was deleted.

5. Against this, the assessee is in appeal before us. The Ld. AR submitted that the assessee had earned resultant gross Handling Charges income aggregating to Rs.47,69,800/-, which had been credited to the Profit and Loss account.. It was submitted that as part of the normal business activities, the assessee had *inter alia* incurred various expenses like Customs duty, Bonded warehouse charges, Shipping line charges, CFS & Port charges, Custodian charges etc. and these were incurred (and paid for) for and on behalf of its clients and they were accordingly subjected to claims of reimbursement from the respective clients, which was done by raising

debit notes. The assessee submitted that instead of netting off these two against each other, the expenses so incurred were charged to the Profit & Loss account, whereas the corresponding reimbursement claims were credited to the Profit & Loss account which was done for the sake of transparency and proper disclosure in the Audited financials.

5.1 According to the Ld. AR, the aggregate reimbursement credits appear on the credit side of the Profit and loss account at Rs.12,58,39,057/-, while corresponding reimbursement expenses incurred amounting to Rs. 12,54,07,397/- appear on its debit side. The minor difference between the two is predominantly arising out of certain short payments and / or discounts availed while paying certain representative reimbursement expenses. The Ld. AR submitted that as this difference had already been credited to the Profit & Loss account and if the same was considered as part of the effective Gross Receipts, the same increase from Rs.47,69,800/- as mentioned at para-1 above to Rs. 52,01,460/-, as stated in the written submission filed before the CIT(A) and as reproduced in his order.

5.2 The Ld. AR submitted that in order to justify and substantiate the fact that the Gross Receipts only stood at what is mentioned at paragraphs 1 and 2 above, the Ld. AR referred to the Service tax returns (PB page Nos. 14 to 20) as well as Form No. 26AS (PB page Nos. 12 & 13), where subject to certain minor reconcilable differences attributable to certain services not liable to service tax / TDS etc., the figures match with these. The Ld. AR submitted that despite the fact that the

reimbursement of expenses cannot form part of the Gross Receipts / Turnover for all practical purposes, thus not liable for considering as the basis for estimation of corresponding profit, the AO erred in estimating the profit @ 9% on the sum total of Handling Charges. and Reimbursement Receipts in total, so as to result in the corresponding total income estimated at Rs.1,17,54,797/-. While doing this, the AO had completely disregarded the fact that even after crediting the minor difference between the reimbursement expenses incurred and corresponding reimbursement recoveries made, even the Gross Receipts of the Appellant stood only at Rs.52,01,460/- as mentioned in para 2 above and the assessee could not have earned a profit which was more than double this gross amount.

5.3 According to the Ld. AR, the CIT(A) though granted partial relief, he also could not appreciate this aspect and directed the AO to estimate the profit at 9% on the adopted turnover of Rs. 9,00,00,000/-, which was again inclusive of such reimbursement receipts, which could not have an element of profit embedded therein.

5.4 Regarding the mention of the turnover and corresponding expenses having been overstated in the Audited Financials, as referred to in the body of the orders passed by the lower authorities, the Ld. AR emphasized that the same is tax neutral, as such inadvertent overstatements clearly appear on both the sides of the Profit & Loss account thus naturalizing its effect.

5.5 In view of the above, the Ld. AR requested the Tribunal to estimate the income on the basis of the actual gross receipt and handling charges which can have an element of profit embedded therein and after excluding the receipts on account of reimbursements and dispose the matter on merit. The Ld. AR relied on the decision of the ITAT, Delhi in the case of Jaquar Enterprises vs. DCIT 48 taxmann.com 19 where in the Assessing Officer had charged 8% profit on reimbursement of Godown rent, which was deleted by CIT(A) and upheld by the Tribunal. The Ld. AR also relied on the ITAT, Mumbai in the case of M/s. Helios Logistics vs. ITO in ITA No.1032/Mum/2015 wherein it was held that in case of custom house/clearing and forwarding agent, reimbursement was not part of turnover. The Ld. AR also relied on the ITAT, Cochin in the case of ACIT vs. St. Mary's Rubbers Pvt. Ltd. in ITA No. 224/Coch/2016 wherein it was observed that reimbursement of expenses incurred by clearing agencies on behalf of the client did not constitute income of the clearing agent and no TDS was required to be made thereon. Therefore, the provision of section 194C will not be applicable in respect of reimbursement of expenses.

5.6 The Ld. DR relied on the order of the lower authorities.

6. We have heard the rival submissions and perused the record. In this case, the assessee filed the Profit and Loss account and Balance sheet which showed the total receipt at Rs.13,06,08,857/-. The contention of the assessee is that it included reimbursement of expenditure which does not have any profit element in it. According to the Ld. AR, the re-imburement amount of Rs.12,58,39,057/- is to be

excluded from the total income credited in the P&L account, so as to estimate the income of the assessee. Thus, the handling charges would be only Rs.47,69,800/-. The Assessing Officer estimated the income at 9% of the total turnover. However, in our opinion, the assessee has to prove that the income credited in the P&L account which includes reimbursement of expenses also. Before us, the assessee has not been able to substantiate the reimbursement of income included in the gross income credited in the P&L account. In the interest of justice, this issue is remitted to the file of the Assessing Officer to examine afresh and then determine the income of the assessee. However, we make it clear that if the assessee is not co-operating with the Assessing Officer by producing the books of account before him, in that event, the Assessing Officer is at liberty to estimate the income to the best of his knowledge. With this observation, we remit this issue to the file of the Assessing Officer for fresh consideration. The grounds of appeal of the assessee are partly allowed for statistical purposes.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29th November, 2019.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 29th November, 2019
GJ
Copy to:

1. M/s. Trans Marine Corporation, No. VIII/1436(5), Royale Plaza Building, Bridge Road, Aluva, Ernakulam-683 101.
2. The Income Tax Officer, Ward-2(5), Non Corporate, Kochi.
3. The Commissioner of Income-tax(Appeals), Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin