

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F + SMC' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5970/DEL/2018 (A.Y 2015-16)

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| Sanjay Nagraj Bararia 1182, Baradari, Gali Teliyan, Delhi AHXPB8889N (APPELLANT) | Vs | ITO Ward-47(2) Room No. 111, Drumshap Building New Delhi (RESPONDENT) |
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| Appellant by | Sh. Vikas Goel, CA |
| Respondent by | Sh. Pradeep Singh Gautam, Sr. DR |

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| Date of Hearing | 29.01.2020 |
| Date of Pronouncement | 18.02.2020 |

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 12/06/2018 passed by CIT(A)-16, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

“1. The Order of the Hon’ble Commissioner of Income tax (Appeals)- 16, New Delhi upholding the Order of the Ld. Assessing Officer (AO) i.e. Income Tax Officer, Ward-47(2) New Delhi, to the extent of addition U/s 68 of the Income Tax Act’1961 is against the facts of the case and bad in Law.

2. The Hon’ble Commissioner of Income tax (Appeals) was wrong in holding the contention of the Ld. Assessing Officer that the amount of Rs. 10,49,414/-

on account of 5% of total payable for services to truck drivers Rs. 20988280/- outstanding as at 31.03.2015 under sundry creditors was unexplained cash credit U/s 68 of the Income tax Act' 1961.

3. *The Order of the Hon'ble Commissioner of Income tax (Appeals)- 16, New Delhi upholding the Order of the Ld. Assessing Officer (AO) i.e. Income Tax Officer, Ward-47(2) New Delhi, to the extent of addition U/s 69 of the Income Tax Act'1961 is against the facts of the case and bad in Law.*

4. *The Hon'ble Commissioner of Income tax (Appeals) was wrong in holding the contention of the Ld. Assessing Officer that the amount of Rs. 65000/- on account of 20% of total addition to fixed assets Rs. 325000/- was unexplained expenditure U/s 69 of the Income tax Act' 1961."*

3. The assessee is an individual carrying on business as a goods transport agency in name of M/s Jai Shree Transport Corporation. The assessee furnished its return of income for the Assessment Year 2015-16, declaring total income at Rs. 12,18,040/- on 30/09/2015. The Assessing Officer observed that the transportation income has shown low profit and tax credit claimed in ITR is less than tax credit available in 26AS. The assessment was completed on 28/12/2017 thereby making addition on account of Rs.10,49,414/- in respect of 5% of total outstanding Sundry Creditors u/s 68 of the Income Tax Act, 1961, addition of Rs. 1,30,000/- on account of unsecured loans u/s 68 of the Act as well as addition of Rs. 65,000/- on account of unexplained expenditure u/s 69 of the Act.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the difference between freight income collected and hire charges paid to truck operator is his gross profit. When goods are booked for transportation a token part payment is made to truck

driver for which expenses and balance of higher charges is paid when he returns after delivery of goods. The outstanding balance of such hire charges Rs.2,09,88,280/- was payable as on 31/3/2015 relating to Financial Year 2014-15 which was paid in next year by the assessee. The Ld. AR further submitted that during the assessment proceedings assessee submitted complete details of Chalan No, GR No, Truck No, Hire Charges, advance paid, PAN, Place of Origin and balance outstanding as on 31/3/2015. But the Assessing Officer insisted to furnish bank account, the copy of ITR and confirmation of these outstanding. The assessee in his reply, the submitted that truck drivers are not available at addresses given. Hence, these details cannot be furnished immediately because the same depends on approval of said truck owner/driver. The Assessing Officer made presumptive 5% addition on account that the assessee failed to furnish any proof of repayment. The Ld. AR submitted that the CIT(A) ignored assessee's contention and confirmed the additions.

6. The Ld. AR submitted that the CIT(A) ignored the fact that the addition in income has been made u/s 68 of the Act on presumptive basis without any reasoning.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A)..

8. We have heard both the parties and perused the material available on record. From the perusal of the records, it can be seen that the assessee has not provided the confirmation, bank account; copy of ITR was not provided at the time of assessment proceedings and asked for further time which was not given by the Assessing Officer. The Assessing Officer has made the addition on the presumptive basis without giving opportunity to the assessee to provide the substantial evidence. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer by allowing the assessee to submit the

details which was asked by the Assessing Officer and after verifying the evidence make the reasonable addition accordingly. Thus, Ground No. 1 & 2 are partly allowed for statistical purpose.

9. As regards Ground No. 3, the same also needs to be verified. Therefore, we are remanding back the addition u/s 69 in respect of unexplained expenditure. Ground No. 3 is partly allowed for statistical purpose.

10. As regards, Ground No. 4, the amount of Rs. 65,000/- on account of 20% of total addition to fix assets was duly expenditure by the assessee during the assumption proceedings which was totally ignored by the Assessing Officer as well as CIT(A). Thus, Ground No. 4 is allowed.

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

Order pronounced in the Open Court on 18th FEBRUARY, 2020.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 18/02/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 30.01.2020 |
| Date on which the typed draft is placed before the dictating Member | 30.01.2020 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | 19.02.2020 |
| Date on which the final order is uploaded on the website of ITAT | 19.02.2020 |
| Date on which the file goes to the Bench Clerk | 19.02.2020 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |