

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI R.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA Nos. 284//CHD/2020

निर्धारणवर्ष / Assessment Year : 2016-17

Shri Guru Nanak Truck Operators Union, Sunam, C/o Vipul Gupta, Advocate, Street No. 27, Prem Basti, District Sangrur-148001	बनाम	The ITO, Suman
स्थायीलेखासं./PAN NO: AABAT0629A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितीकीओरसे/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्वकीओरसे/ Revenue by : Sh. Ashok Khanna, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 15.02.2021
उद्घोषणाकीतारीख/Date of Pronouncement : 18.03.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 20.02.2020 passed by Commissioner of Income Tax (Appeals), Patiala [for short 'the CIT(A)'] for the assessment year 2016-17, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143(3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee being Association of Persons (AOP) filed its return of income for the assessment year under consideration declaring total income of Rs. 1,56,765/-. Since the case

was selected for limited scrutiny, notice u/s 143(2) of the Act was served upon the assessee. Subsequently, the AO issued notice u/s 142(1) of the Act. In response thereof, the assessee filed written submissions and furnished the documents called for by the AO. It was noticed that as per form No. 26AS for the AY under consideration, the assessee received an amount of Rs. 5,58,46,055/-, however, declared commission income of Rs. 6,80,400/- and interest income of Rs. 1,21,461/- in its return of income. Accordingly, the assessee was asked to reconcile the receipts and to produce Books of Accounts, bills/invoices relating to expenses claimed, bills/invoices issued to the parties as appearing in Form-AS 26, copies of tender documents, billty books etc. Since the assessee failed to produce complete record, the AO asked the assessee to show cause as why the receipts appearing in annual statement should not be treated as unaccounted receipts and ratio of 5% should not be applied to compute the income during the previous year.

3. The Assessing Officer after hearing the assessee, rejected the books of account u/s 145(3) of the Act and estimated the net profit @ 2% of the gross receipts holding that the assessee has failed to account for the receipts appearing in Form 26AS. Accordingly, the Assessing Officer made addition of Rs. 11,16,916/-. In the first appeal, the Ld. CIT(A) restricted the addition to 1.5% of the gross receipts and upheld the addition to the extent of Rs. 8,37,690/-. Still aggrieved, the assessee

is in appeal before this Tribunal. The assessee has raised the following grounds of appeal: -

- 1. That the Worthy Commissioner of Income Tax (Appeals has erred in dismissing the appeal filed by the assessee, in part.*
- 2. That the Worthy CIT (A) has erred in holding the action of the Assessing Officer in rejecting the books of accounts and applying an estimated net profit rate on the gross receipts, after giving a part relief of only 0.5%, the net profit rate from 2% of gross receipts as estimated by the AO and, therefore, has erred in confirming the commission income of Rs. 8,37,690/- being 1.5% of the gross receipts of Rs. 5,58,46,055/- of the assessee.*
- 3. That the Worthy CIT (A) has erred in not considering that the appellant earned gross transportation receipts of Rs.5,58,46,055/- on behalf of its members, who owned the trucks & performed the work of goods delivery and that such proceeds were passed to the members based on the work done by them, after deducting commission income from the same, which has been duly offered to tax by the assessee and, thus, no addition was called for in this regard.*
- 4. That the Worthy CIT(A) has erred in not considering that even the TDS deducted on the such gross receipts has been reimbursed to the members of the assessee, after the refunds have been processed by the Income tax department and as such no income from such gross receipts has accrued to the assessee.*
- 5. Notwithstanding, the above grounds of appeal, the CIT (A) has erred in confirming the addition in case of the assessee applying an estimated net profit rate of 1.5% on gross receipts (as reduced from 2% net profit rate estimated by the AO) by rejecting the books of account of the assessee without pin pointing any defect in the records & books of the assessee and only based on subjective opinions of the AO, against the facts and circumstances of the case.*
- 6. That in view of above facts and the fact that, detailed submissions were filed by the assessee during the course of hearing, which finds mention in Para 6 Page 5 of the assessment order, have not been considered properly and the orders have been passed based on the conjectures & surmises and applying ratio of judgements, which are distinguishable on facts.*

7. Notwithstanding the aforesaid grounds of appeal, the net profit rate of 1.5% of gross receipts as confirmed by the worthy CIT(A) is on the higher side, particularly when the assessee didn't own any trucks of its own.

8. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

4. Since there is a delay of 44 days in filing the present appeal, the assessee has filed an application for condonation of delay. The Ld. Counsel submitted before us that the order u/s 250(6) was passed on 20.2.2020 and served upon the assessee on 13.3.2020. Therefore, the appeal was to be filed on or before 16.5.2020. However, due to the outbreak of COVID-19, the appeal could not be filed within limitation period. The Ld. Counsel further pointed out that the Hon'ble Supreme Court taking cognizance of Covid-19 pandemic across the country, has extended the limitation for filing appeals etc. w.e.f. 15.03.2020 till the further orders. Since the assessee's case is covered by the order of the Hon'ble Supreme Court, the delay may be condoned.

5. The Ld. Departmental Representative did not oppose the application for condonation filed by the assessee.

6. As pointed out by the Ld. Counsel, the Hon'ble Supreme Court has extended the limitation period for filing appeals etc. holding as under: -

“In case the limitation has expired after 15.3.2000, then the period from 15.3.2000 till the date on which the lock down is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of the lock down”

7. The assessee has filed the present appeal in the month of July 2020 i.e., during the period of lock down. Hence, the assessee's case is covered by the order of the Hon'ble Supreme Court. We therefore, condoned the delay in filing the present appeal and allowed the Ld. Counsel for the assessee to argue the appeal.

8. Before us, the Ld. Counsel for the assessee submitted that the assessee is a truck union, formed to facilitate the truck owners / members to procure contracts for transportation of goods from different agencies and the entire work is performed by the truck owners and the assessee does not own even a single truck. Out of the amount received by the union, only a nominal amount is retained by the appellant/assessee to meet the day-to-day expenses. The Ld. Counsel further submitted that the Ld. CIT(A) has wrongly upheld the action of the Assessing Officer in rejecting the books of account without pointing out any specific defect in the books of the appellant except for non-production of vouchers. The Ld. Counsel further contended that the Ld. CIT(A) has wrongly sustained the addition of 1.5% of the Gross receipts on estimated basis. The Ld. counsel placing reliance on the decision of the Amritsar Bench of the ITAT in the case of *The Truck Operator Union, Jaitu vs ITO, Faridkot ITA No. 577/Asr/2013* submitted that in the said case, the books of the assessee were rejected u/s 145(3) due to non-production of vouchers by the assessee. However, the ITAT deleted

the addition holding that the rejection of books of account without pointing out any specific defect is not sustainable.

9. Without prejudice, the Ld. counsel submitted that the Ld. CIT(A) has estimated the net profit @ 1.5 of the gross receipts of the assessee which is unreasonable and on higher side. The Ld. Counsel placing reliance on the judgments of the Hon'ble Supreme Court in the case of *CIT vs. Laxminarain Badridas 5 ITR170 (SC)* and the Hon'ble Rajasthan High Court in the case of *CIT vs. Gupta KN Construction Company, 371 ITR 291(Raj)* submitted that in view of the ratio laid down in the aforesaid cases the Ld. CIT(A) ought to have considered the past history of net profit rate of the assessee while determining the net profit on estimate basis. The Ld. Counsel further submitted that in the light of the law laid down in the aforesaid cases, estimation of net profit @ 1.5% of the gross profit is unreasonable. The Ld. Counsel invited our attention to the chart showing net profit declared in the past five years including the assessment year under consideration, as per which the percentage of gross commission income of detailed receipts are as under: -

AY	Gross receipts	Net Shown	% of Net Profit declared
2015-16	5,74,62,365/-	88,296/-	0.15%
2014-15	2,72,67,552/-	55,913/-	0.20%
2013-14	9,90,22,736/-	6,93,680/-	0.70%
2012-13	8,20,88,000/-	4,70,160/-	0.57%
2011-12	5,82,64,290/-	2,55,110/- (R) Assessed – 2,95,610/-	0.50%

10. In the assessment year under consideration, the assessee has declared net profit ratio of 0.27%. On the basis of the aforesaid facts and the principles of law laid down in the aforesaid cases, the Ld. counsel submitted that the percentage of profits estimated by the Ld. CIT(A) is on the higher side, therefore unreasonable and not sustainable.

11. On the other hand, the Ld. Departmental Representative (DR) submitted that the Ld. CIT(A) has sustained the addition @ 1.5% gross profits keeping in view the facts and circumstances of the case and on the basis of past history. Hence, the estimation of net profit @1.5% sustained by the Ld. CIT(A) is reasonable, therefore, no interference is warranted.

12. We have heard the rival contentions of parties and perused the material on record including the cases relied upon by the authorities below and the Ld. counsel for the assessee. The grievance of the assessee is that the Ld. CIT(A) has wrongly sustained the addition @ 1.5% without taking into consideration the past history of the case of the assessee and that the Ld. CIT(A) has wrongly affirmed the action of the Assessing Officer in rejecting the books of account of the assessee without assigning any reasons. As pointed out by the Ld. counsel, in the past three years, the gross commission of the total receipts remained below 1%. The Ld. CIT(A) has determined the addition @ 1.5% and as per settled law when the books of account are rejected, the profit is determined on estimation basis. Further, in determining the profit on

estimation basis, the past history plays a vital role. Therefore, we are of the considered view that the net profit rate of 1.5% sustained by the Ld. CIT(A) is on higher side in view of the past history. Hence, we find merit in the contention of the Ld. counsel that 1.5% profit rate estimated by the Ld. CIT(A) is on higher side. Accordingly, in the interest of justice, we partly allow the appeal of the assessee and modify the order passed by the Ld. CIT(A) and restrict the net profit rate to 1% of the gross receipts, which is more than the percentage in the last 3 years. We therefore, direct the Assessing Officer to compute the addition @ 1% of the gross receipts.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 18.03.2021.

Sd/-
(N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 18.03.2021
“आर.के.”

Sd/-
(R.L.NEGI)
न्यायिक सदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar