

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "A" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos.3786 & 3787/Del/2018  
Assessment Years : 2009-10 & 2010-11**

Anil Kumar Seth, C/o-Vinod Kumar Bindal & Co., CA, Shiv Shushil Bhawan, D-219, Vivek Vihar, Phase-1, New Delhi-110095. <b>PAN-APQPS4647J</b>	vs	DCIT, Central Circle, Karnal.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh.V.K.Bindal, CA & Ms. Rinki Sharma	
<b>Respondent by</b>	Sh. Satpal Gulati, CIT DR	
<b>Date of Hearing</b>	08.09.2021	
<b>Date of Pronouncement</b>	29.10.2021	

**ORDER**

**PER KUL BHARAT, JM :**

These two appeals filed by the assessee for the assessment years 2009-10 & 2010-11 are directed against the orders of learned CIT(A)-2, Gurgaon both dated 28.03.2018. Since the identical grounds have been raised, both these appeals are taken up together and are being disposed off by way of the consolidated order.

2. First we take up assessee's appeal in **ITA No.3786/Del/2018** pertaining to **Assessment Year 2009-10**. The assessee has raised following grounds in this appeal:-

1. *"The learned CIT(A) erred in law and on facts in confirming the best judgment assessment made u/s 144 of the Act alleging non-cooperation of*

*the assessee and non-furnishing of the desired information; which is not correct as the assessee duly participated in the assessment proceedings and also furnished all the desired details/ documents sought by the department. Thus, the assessment so framed must be annulled being bad in law.*

2. *The learned CIT(A) also erred in law and on facts by not appreciating that there was a massive Jat Reservation agitation in the state of Haryana in the month of February, 2016 when the road/rail movement was totally blocked, which resulted into non-appearance during the said period then before the Assessing Authority due to reasons beyond control of the appellant.*

3. *The CIT(A) while deciding the above issue has relied on her appellate order dated 22/09/2017 against the penalties imposed u/s 271 (1)(b) of the Act which order is not only illegal but is also based on false averments of the assessing officer as was demonstrated in the appellate proceedings. Thus no reliance can be placed on the said appellate order already in appeal before the Hon'ble ITAT.*

4. *The CIT(A) erred in law and on facts in not admitting the legal ground on the facts that the entire search operation in the premises of the appellant was a goof up with unknown intentions as is clear from the Panchnama and other material annexed thereto. Therefore, no reliance can be made on the said proceedings and the statements recorded then. The assessment order passed in consequence to the search warrants in the case of the appellant should be declared as an illegal search and the assessments framed thereafter should be annulled as void ab initio.*

5. *The CIT(A) erred in law and on facts in not admitting the legal ground on the facts that no incriminating material was seized from any premises including of the assessee in respect of any undisclosed income so assessed in the hands of the appellant and no notice u/s 142(1)/148 of the Act was issued to the assessee till the date of search in respect of the assessment years under consideration. Thus, no assessment was pending*

*as on the date of search in respect of the relevant assessment year and no such income can be assessed u/s 153A of the Act which should be deleted.*

*6. The CIT(A) erred in law and on facts in not admitting the additional legal ground on the facts that the information of the impugned relied material being the freights paid by the two companies referred to in the assessment order to make the additions was already with the revenue in the Form No. 26AS for the relevant previous years and I or otherwise this information was gathered during the course of surveys in the premises of Shri Vishnu Overseas (P) Ltd. and Shri Vishnu Eatables (India) Ltd. and not during any search. Thus, the said material could not be relied in any manner to make an addition as undisclosed income u/s 153A of the Act which should be reversed.*

*7. The learned CIT(A) erred in law and on facts in confirming an estimated addition of Rs. 14,37,592/- being the difference in the 10% of gross receipts of transportation charges on the basis of 26AS of the appellant and of the amount disclosed by the appellant himself in his return of income-*

*(i) while not appreciating the true nature of services rendered by the appellant, but merely on whims;*

*(ii) by merely rejecting the submissions of the appellant; and*

*(iii) even when no incriminating material was found in the search and assessment had not abated.*

*Thus, the addition so confirmed must be deleted.*

*8. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*

3. At the time of hearing, Ld. Counsel for the assessee submitted that only effective Ground is Ground No.7 where the Ld.CIT(A) has confirmed the estimated addition of Rs. 14,37,592/-.

4. Facts giving rise to the present appeal are that it is recorded by the Assessing Officer ("AO") that a search and seizure operation was conducted at the residential as well as business premises of M/s. Shri Vishnu Overseas Pvt. ltd. and M/s. Shri Vishnu Eatables India Ltd. Group of cases and bank locker of the assessee on 17.01.2014. Thereafter, the assessee filed its return of income for the year under consideration in Form ITR-4 on 05.01.2016 declaring total income of Rs.10,84,680/-. The statutory notice u/s 153A/143(2) of the Income tax Act, 1961 ("the Act") was issued. In response to the notice, Sh. Navin Chaudhary, CA & Authorized representative of the assessee alongwith assessee Sh. Anil Kumar Seth attended the proceedings, only three times despite having given sufficient opportunities. Under these facts, the Assessing Officer proceeded u/s 144 of the Act. It was noticed by the AO that during the search proceedings of M/s.Vishnu Group of cases, Kaithal, the assessee had received total payment of Rs.5,58,77,566/- under the head "Freight Charges" from M/s. Shri Vishnu Eatables India Ltd. and M/s. Shri Vishnu Overseas Pvt.Ltd. For the Assessment Year under consideration, the total payment received from two entities was recorded at Rs.3,03,30,227/-. The AO after considering the material on record, computed the profit @ 10% on the receipt and thus made addition of Rs.24,92,272/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions partly allowed the appeal. Thereby, Ld.CIT(A) reduced the income which was already declared amounting to Rs.10,84,680/- and sustained the rest of the addition, affirming the action of AO.

6. Now, the assessee is in appeal before this Tribunal.

7. Ld. Counsel for the assessee submitted that before the authorities below, it was stated by the assessee that the impugned payment did not pertain to the assessee as the transporters were not having PAN Nos. Therefore, PAN No. of the assessee was utilized for this purpose. The factum of payment made to the transports was also confirmed by the recipients of the services. Ld. Counsel for the assessee further contended that no effective opportunity was given by the authorities below. Further, he submitted that the assessee had provided sufficient evidences to support his claim.

8. On the contrary, Ld. CIT DR opposed these submissions and took us through the impugned orders. Ld.CIT DR submitted that it is clear from the records that the assessee was given sufficient opportunities but the assessee could not give the satisfactory explanation regarding payment made to the assessee by the recipient of the services. Under these facts, the authorities below were justified in making addition in the hands of the assessee.

9. We have heard the rival contentions and perused the material available on records. The contention of the assessee is that the Authorities below held

assessee liable for tax purely on the basis that his PAN was utilized by the recipient of services for deduction of tax. It is the contention of the assessee that he had nothing to do with the impugned transactions. In fact, he had only facilitated the transaction by allowing transporters to utilize his PAN. It is further contented that the AO did not treat the transaction as bogus, he had treated it as business transaction and computed profit on it at the rate of 10%. So far question regarding nature of receipt is concerned, there is no dispute, the Assessing Officer has treated it being a business receipt. The bone of contention between the Revenue and the assessee, is that as per the assessee the payments were not made to him, in fact the impugned receipt belonged to the transporters.

10. It is also submitted whatever the assessee earned commission, he had duly disclosed in his return of income. We find that the AO has recorded that the assessee could not produce the transporters whose trucks were hired by the company/ies. In the present case, the Assessing Officer made the impugned assessment u/s 144 of the Act. It is incumbent upon the AO when he proceeds u/s 144 of the Act, he is required to make best judgement on some plausible grounds. In this case, the Assessing Officer issued a show cause notice dated 21.03.2016 calling upon the assessee as to why the payment amounting to Rs.5,58,77,566/- received under the Head "Freight Charges" from M/s. Shri Vishnu Eatables (India) Ltd. and M/s. Shri Vishnu Overseas Pvt.Ltd. may not be treated income from undisclosed sources and added in his income. However, instead of treating the entire receipts as bogus, the Assessing Officer proceeded to compute profit on it @ 10% of gross receipt. It is

noteworthy that the Assessing Officer did not record any reasoning as to why he was adopting 10% of gross receipt as profit. In the absence of the reasoning, the requirement of provisions of section 144 of the Act, are not satisfied. Hence, the action of the Assessing Officer cannot be sustained, same is hereby set aside. The Assessing Officer is, therefore, directed to delete the addition. The Ground of appeal No.7 raised by the assessee is allowed and other grounds raised by the assessee are dismissed.

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

12. Now, we take up **ITA No.3787/Del/2018** pertaining to **Assessment Year 2010-11**.

13. The facts and grounds are identical as were in ITA No.3786/Del/2018 pertaining to Assessment Year 2009-10. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.3786/Del/2018 [Assessment Year 2009-10]. For the same reasoning, Ground of appeal No.7 raised by the assessee is allowed and other Grounds are dismissed.

14. In the result, the appeal of the assessee is partly allowed.

15. In the final result, both appeals of the assessee are partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 29<sup>th</sup> October, 2021.

**Sd/-**  
**(G.S.PANNU)**  
**PRESIDENT**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI