

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA NO.6002/DEL/2017
(ASSESSMENT Year 2013-14)**

Shri Anil Kumar,
Prop. Keshri Textiles,
67, New Adarsh Yarn Market,
Panipat – 132 103 (Haryana)

vs. ITO, Ward 1,
Panipat.

(PAN : APKA3634D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri J.B. Sharma, Advocate
REVENUE BY : Ms. Suman Malik, Senior DR

Date of Hearing : 22.11.2021

Date of Order : 25.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Anil Kumar (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 26.07.2017 passed by the Commissioner of Income-tax (Appeals), Karnal on the grounds inter alia that :-

“1. That the Ld. CIT (Appeals) has erred in allowing the appeal partly on assumption bases and not on facts.

3. That the Ld. CIT (Appeal) has wrongly estimated the income of the appellant @ 3% whereas the appellant has submitted the following facts before the Hon'ble CIT (A) :-.

i) That when it has been accepted that the appellant is a entry provider and not making actual sales/purchase and earns nominal income by way of commission on issuing bills to parties @ 0.29% to 0.50%.

ii) That the in the next year i.e. A Y 2014-15, the same Assessing Officer in the case of the appellant has assessed the income of the appellant @ 0.5%. A copy of the assessment order for the A Y had been provided to the Ld CIT (A).

iii) That there are so many cases in which the department has accepted this version and assessed the income of the persons like in one of the cases is of Sh Ravinder Kumar Sharma prop M/s Shree Shakumbhri Enterprises, Panipat calculated income @ 0.75%. The copies of the order above stated parties had been provided before the Ld CIT(A).

iv) That the Ld. CIT (A) not considered the above stated facts, placed before it and estimated the income of the appellant @ 3% on the assumption bases and not based on facts, which is against the natural justice in such cases.

3. That the appellant hereby appeals to consider the facts of the case, direct the department to calculate the reasonable income of the appellant as has been accepted by the deptt in such cases and oblige.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of trading as a wholesaler and filed return of income declaring taxable income of Rs.3,46,070/-. During the scrutiny proceedings, Assessing Officer (AO) called upon the assessee under section 133(6) of the Income-tax Act, 1961 (for short ‘the Act’) to furnish copy of bank accounts of M/s. Kesari Textile Prop. Shri Anil Sharma & account of M/s. Kaushik Enterprises. From the perusal of the bank account, AO noticed that the assessee has made huge cash withdrawal from the bank account to the tune of Rs.1,64,97,400/- and

Rs.3,10,61,000/- from M/s. Vinod International Bank Account and M/s. Anil Trading Co. Bank Account which shows that the assessee is an entry operator. Assessee also alleged to have purchased goods from 21 firms whose addresses were either found to be not existing or they have refused to accept the service of notice u/s 131 of the Act. AO proceeded to conclude that assessee has never supplied any items and issued bills to give benefits to certain firms to inflate their expenses nor the assessee has furnished complete books of account along with vouchers and consequently, AO invoked the provisions contained u/s 145 of the Act and thereby rejected the books of account. AO observed that considering the trade practice in case of entry operators, assessee must have charged 10% of these entries and thereby assessed the total income of the assessee at Rs.1,07,76,050/- @ 10% being in business of providing entries to various businessmen.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has partly allowed the appeal by calculating the income of the assessee @ 3% to Rs.28,86,745/-. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended inter alia that findings returned by AO that assessee is an accommodation entry provider is purely based upon conjectures and surmises as no evidence has been brought on record; that in trading business as a wholesaler 10% profit is impossible ; that in the succeeding years for AYs 2014-15 & 2015-16, Revenue itself estimated the commission income of the assessee at 0.5% and brought on record copies of the order passed by the lower Revenue authorities for AYs 2014-15 & 2015-16.

6. However, on the other hand, ld. DR for the Revenue vehemently repelled the contentions raised by the assessee by relying upon the order passed by the AO as well as ld. CIT (A).

7. We have perused the order passed by the ld. CIT (A) who has calculated the income of the assessee by applying 3% rate as against 10% applied by the AO which comes to Rs.28,86,745/- by returning following findings :-

“3.3 Findings:-

A perusal of the facts of the case reveal that even before the undersigned, the appellant has agreed to the fact that he provided accommodation entries to dealers in order to help reduce their tax liabilities. The Assessing Officer has clearly mentioned that complete books of accounts vouchers etc were not produced and, hence, the books were rightly rejected and an

estimate made of the income earned out of the entries provided. The Assessing Officer has pegged the income @ 10% of Rs.10,77,60,505/- (the figure shown as the appellant's turnover). However, the rate of 10% appears to be on the higher side as normally the payouts for arranging accommodation entries range on an average between 2.5% to 3.5%. I, therefore, peg the rate reasonably applicable at calculating the income @ 3% of Rs.10,77,60,505/- which comes to Rs.32,32,815/-. After adjusting with the returned income of Rs.3,46,070/- the total income is calculated at Rs.28,86,745/ -. The appellant gets a relief of Rs.75,43,235/-."

8. Before Id. CIT (A), assessee has agreed to the fact that he provided accommodation entries to the dealers in order to help to reduce their tax liabilities. In the backdrop of the aforesaid facts and circumstances of the case, now the sole question arises for determination in this case is, "*as to how income earned out of entries provided by the assessee is to be estimated.*"

9. Ld. CIT (A) thrashed the facts and reached the conclusion that in the identical trade, income of the assessee needs to be calculated @ 3% of Rs.10,77,60,505/- which comes to Rs.,32,32,815/- and after making adjustment with the returned income of Rs.3,46,070/- the total income of the assessee is calculated at Rs.28,86,745/-.

10. In the given circumstances, contention raised by the assessee that order passed by the AO in assessee's own case in succeeding years i.e. AYs 2014-15 & 2015-16 vide order dated 28.12.2016 & 28.12.2017 respectively is applicable to the year under

consideration by applying the rate of 0.5% of the total billing is not sustainable because in AYs 2014-15 & 2015-16 there was not even a whisper if assessee had ever entered into the business of providing accommodation entries to the dealers to help them to reduce their tax liabilities rather in those years it was simple case of dealing into wholesale business of trading in which Revenue itself had accepted 0.5% ratio on total billing to assessed income of the assessee. So, we are of the considered view that on the basis of succeeding years' orders having distinguishing facts, assessee's income cannot be estimated by applying the same ratio i.e. 0.5%. So, the Id. CIT(A) has rightly thrashed the issue in the light of the facts and circumstances of the case and prevailing general practices in the identical trade. Finding no illegality or perversity in the impugned order passed by the Id. CIT (A), appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 25th day of November, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of November, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Karnal.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
