

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE Dr. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. RAVISH SOOD, JUDICIAL MEMBER

ITA No. 140/(Asr)/2017
Assessment Year: 2013-14

Shri Rachpal Singh,
H. No. 1646 A Rajputa
Chowk, Amritsar
[PAN: BAZPS0572D]
(Appellant)

Vs. Income Tax Officer,
Ward-3,
Amritsar
(Respondent)

Appellant by : Sh. Randeep Mahajan, CA.
Respondent by: Sh. Trilochan Singh, PS

Date of Hearing: 16.12.2021

Date of Pronouncement: 24.12.2021

ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by Commissioner of Income Tax (Appeals)-II [for short CIT(A)], Amritsar dated 16.12.2016, which in turn arises from the order passed by the Assessing Officer u/s.143(3) of the Income Tax Act, 1961 (for short 'Act') dated 20.01.2016 for Assessment Year 2013-14.

2. The assessee has assailed the impugned order on the following grounds of appeal before us.

“1) That the Assessment Order passed by Learned The Worthy Commissioner of Income Tax (APPEALS)-2, is illegal, arbitrary and contrary to the facts on records and this illegality pervades over all other grounds of appeal.

2) The Learned AO has erred in law in interpreting the provisions of the section 44AA of the IT Act 1961 and failed to specify the particular clause of section 44AA of the Income Tax Act 1961, under which the assessee is carrying on a profession.

3) The Ld. AO has misinterpreted the provisions of section 44AD by treating the return of Income of the assessee as Invalid.

4) The Ld. AO and CIT(A)-2 has ignored the information and documents submitted in support of the nature of business of the appellant. Mere assuming the nature of business and/or profession on the basis of the entries in form 26AS and as per section of tax deduction under source is against law and natural justice.

5) The Ld. AO as well as the worthy CIT (A)-2 has not been able to give the grounds and justification for disallowance of expenses of the appellant claimed in the return of Income.

6) On the given grounds it is appealed that the additions in income of Rs. 10,39,691/- should be deleted.

7) That the appellant craves leave to add, amend or withdraw any new ground or grounds of appeal before or at the time of hearing of appeal.”

3. Briefly stated, the assessee who during the year under consideration was rendering services as a recovery agent to various financial institutions and banks had e-filed his return of income for Assessment Year 2014-15 on 15.03.2014, declaring an income of Rs.5,22,201. The return of income filed by the assessee was processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee

had offered his income under the deeming provisions of section 44AD of the Act. Holding a conviction that the amount received by the assessee from the financial institutions and banks to whom services were rendered by him as a recovery agent were in the nature of professional receipts on which the said parties had deducted tax at source under section 194J of the Act, the Assessing officer called upon the assessee to show cause as to why the net of the receipts may not be treated as his income for the year under consideration. In reply, the assessee tried to impress upon the Assessing Officer that he had rightly offered his income within the meaning of section 44AD of the Act. Elaborating on his aforesaid claim, it was submitted by the assessee that his services as a recovery agent to various financial institutions and banks involved dealing with their customers / clients in order to facilitate recovery of their outstanding loans, and thus, the amounts therein received by him for rendering such services by no means could be brought within the meaning of commission or brokerage. It was further submitted by the assessee that as no obligation was cast upon him to maintain books of account as per the mandate of Section 44AD of the Act, therefore, he could not be called upon to furnish the details of the expenses therein claimed. However, the aforesaid claim of the assessee did not find favour with the Assessing officer. It was observed by the Assessing Officer that a perusal of the form 26AS of the assessee revealed that the various financial institutions and banks to whom services were rendered by the assessee as a recovery agent had deducted tax at source qua such payments U/sss. 194J, 194C and 194H of the Act, as under.

<i>Sr. No.</i>	<i>Name of the Deductor</i>	<i>Section</i>	<i>Amount paid credited in A.Y. 2013-14 (in Rs.)</i>	<i>Tax Deducted (in Rs.)</i>
1.	<i>Family Credit Limited</i>	<i>194C</i>	<i>2,14,156/-</i>	<i>4286/-</i>
2.	<i>Barclays</i>	<i>194J</i>	<i>17,25,146/-</i>	<i>1,72,527/-</i>

	<i>Investments & Loans (India) Limited</i>			
3.	<i>Finruise Credit Services Pvt. Ltd.</i>	<i>194J</i>	<i>1,27,766/-</i>	<i>12,778/-</i>
4.	<i>HDFC Bank Ltd.</i>	<i>194J</i>	<i>7,01,573/-</i>	<i>70,158/-</i>
5.	<i>Vodafone South Ltd.</i>	<i>194H</i>	<i>2,796/-</i>	<i>280</i>
		<i>Total</i>	<i>27,71,4377-</i>	<i>2,60,029/-</i>

4. Rebutting the aforesaid observations of the AO, it was submitted by the assessee that considering the nature of services that were rendered by him, the amounts therein received in lieu thereof by no means could be held to be in the nature of commission or brokerage. Also, it was submitted by the assessee that the nature of services provided by him could also not be brought within the meaning of Section 194C of the Act. However, the AO holding a conviction that the majority of the payments received by the assessee from the financial institutions and banks for the services which were rendered by him as a recovery agent were either in the nature of commission or brokerage, contractual receipts or receipts for rendering of professional or technical services, thus, the same could not be brought within the scope and gamut of Section 44AD(6) read with section 44AA(1) of the Act. Observing, that the provisions of Section 44AD of the Act were applicable only qua the business income, the Assessing Officer was of the view that the assessee who was not carrying on any business had wrongly offered his income for tax under the aforesaid statutory provision, viz., Section 44AD of the Act. Noticing that the assessee had declined to furnish the details of expenses, for the reason, that he was under no obligation to maintain regular books of account as per the concession provided in Section 44AD of the Act, the Assessing Officer held a conviction that the assessee had not incurred any expenses to earn the income from the services that were provided by him to various banking and financial

institutions. Backed by his aforesaid view, the Assessing Officer after allowing deduction of expenses amounting to Rs.97,400/- that were claimed by the assessee in his return of income, therein, determined his income from the services that were rendered by him as a recovery agent at an amount of Rs.26,74,038/-. Accordingly, the AO vide his order passed u/s. 143(3) dated 20.01.2016 assessed the income of the assessee at Rs.28,50,208/-.

5. Aggrieved, the assessee carried the matter before the CITA. Observing, that no infirmity did emerge from the order of the Assessing Officer who had rightly concluded that the assessee was not entitled to offer his income under the deeming provisions of Section 44AD of the Act, the CIT(A) principally upheld the view taken by the Assessing Officer. At the same time, the CIT(A) being of the view that the assessee would have incurred expenses in the course of rendering of his services as a recovery agent, thus, concluded that the net income of the assessee could fairly be taken at 15% of the amount of gross receipts. Accordingly, the CIT(A) scaled down the disallowance made by the Assessing Officer to an amount of Rs.12,88,319/-.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter before us.

7. The Ld. Authorized Representative (for short "AR") for the assessee took us through the facts of the case qua the issue in hand, i.e., as to whether or not the assessee was entitled to offer his income from rendering of services as a recovery agent to various financial institutions and banks as per the deeming provisions of Section 44AD? In order to impress upon us that the assessee had duly offered the income as per the mandate of section 44AD of the Act, it was submitted by the Ld. AR that the services which were rendered by the assessee as a recovery agent to

the various financial institutions/banks did not fall within the realm of the specified professions contemplated in Section 44AA of the Act. Backed by his aforesaid contention, it was averred by the Ld. AR that as the assessee was not rendering any professional services but was providing services which were clearly in the nature of activities carried out by him in the normal course of his business, therefore, he was clearly an assessee who was carrying out an eligible business within the meaning of Section 44AD of the Act. Also, in order to drive home his claim that the assessee had duly offered his income on a presumptive basis under Section 44AD of the Act, it was submitted by the Ld. AR that the assessee had been offering his income in a like manner in the preceding years, i.e., Assessment Year(s) 2010-11 to 2012-13, and the same had duly been accepted by the Department. Also, it was submitted by the Ld. AR that though the Department had during the year under consideration held that the assessee was not entitled to offer his income u/s. 44AD of the Act, however, in the immediately succeeding year, i.e., Assessment Year 2014-15 wherein too the assessee had offered his income under the aforesaid deeming provision, the same had been accepted by the Department. In the backdrop of his aforesaid contentions, it was submitted by the Ld. AR that the orders of the lower authorities who had held that the assessee was not eligible to offer his income u/s. 44AD was not sustainable in the eyes of law and was liable to be vacated.

8. Per contra, the Ld. Departmental Representative (for short "DR") relied upon the orders of the lower authorities. It was submitted by the Ld. DR that as per clause (iii) to sub-section (6) of section 44AD of the Act, a person who is carrying on any agency business would not be entitled to offer his income on a presumptive basis u/s. 44 AD of the Act. Backed by his aforesaid contention, it was submitted by the Ld. DR that as the assessee was a recovery agent, therefore, he was clearly

debarred from offering his income from rendering of his services as per the presumptive provisions of Section 44AD of the Act.

9. We have heard the Ld. Authorized Representative for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the record that the assessee is a recovery agent rendering his services to various financial institutions and banks. As is discernible from the records, we find that the aforesaid financial institutions and banks to whom services were rendered by the assessee as a recovery agent had while remitting the payments to him had deducted tax at source U/ss. 194C, 194J and 194H of the Act. In the backdrop of the characterization of the payments by the aforementioned recipient of services, viz., financial institutions/banks, the AO was of the view that the nature of the receipts in the hands of the assessee for rendering of the services as a recovery agent was to be similarly construed i.e., either in the nature of contractual receipts, professional receipts or commission and brokerage. Backed by his aforesaid observations, the AO was of the view that as the amounts received by the assessee were either for rendering of professional or technical services or in the nature of commission or brokerage, therefore, the same not being business receipts could not be brought within the realm of the presumptive taxation contemplated u/s. 44AD of the Act. As observed by us hereinabove, the Assessing Officer backed by his aforesaid observations had concluded that the assessee was not entitled to offer his income u/s. 44AD of the Act, which view so taken by the AO had thereafter principally been approved by the CIT(A). After deliberating at length on the issue in question, i.e., as to whether or not the services rendered by the assessee as a recovery agent to the financial institutions and the banks are in the nature of professional receipts, as held by the Department, or are in the nature of the business receipts, as claimed by the

assessee, we find substance in the claim of the assessee. Before us, the solitary contention of the Ld. DR was that as the assessee was an “agent” rendering his services for recovery of the outstanding dues of the financial institutions and banks, therefore, as per clause (iii) to sub-section (6) of section 44AD he was not entitled to offer his income under the presumptive scheme contemplated under the aforesaid statutory provision. In order to appreciate the correct factual position, we had looked into an “agreement” for the supply of cheque/cash pick up and collection services that was entered into between the assessee and Barclays Investments and Loans India Ltd., dated 08.08.2008, (Page 14 to 90 of APB). On a perusal of Paragraph 37 of the aforesaid agreement, (Page 42 of APB), we find that it is therein provided that nothing contained in the agreement was to be deemed to constitute either a partnership between the parties nor constitute either party as the agent of the other party for any purpose. As such, it was clearly provided that the assessee was not to be held as an “agent” of the aforesaid bank, viz., Barclays Investments and Loans India Ltd. Backed by the aforesaid fact, we are of the considered view that the solitary contention raised by the Ld. Departmental Representative before us, i.e., the provisions of Section 44AD were not applicable to the case of the assessee as he was carrying on an agency business, fails. Adverting to the nature of the activities carried out by the assessee, we are of the considered view that as the assessee was rendering his services as a recovery agent to the various parties, therefore, the same could safely be held to be in the nature of activities that were carried out by him in the normal course of his business. In fact, we find no justifiable reason as to why the amount received by the assessee from rendering of his services as a recovery agent for various financial institutions and banks is not to be held as business receipts in his hands. Apart from that, we are of the considered view that as the Department had consistently in the past, i.e., from Assessment Years 2010-11 to Assessment Year 2012-13 accepted the income that

was offered by the assessee under the aforesaid presumptive scheme of taxation contemplated in Section 44AD of the Act, therefore, in the absence of any shift in the nature of activities of the assessee, a view to the contrary, by taking recourse to an inconsistent approach could not be permitted on its part. Also, the very fact that the assessee in the immediately succeeding year, i.e., Assessment Year 2014-15 had offered his income from the services rendered as a recovery agent on a presumptive basis u/s. 44AD of the Act, which had not been dislodged by the Department, therein, further lends credence to his claim that he had rightly offered his income from rendering of the aforesaid services u/s. 44AD of the Act. We, thus, in the backdrop of our aforesaid deliberations not being able to persuade ourselves to concur with the view taken by the lower authorities that the assessee had wrongly offered his income from rendering of the services as a recovery agent to various financial institutions and banks u/s. 44AD of the Act, therein, set aside the same. Accordingly, we herein set aside the order of the CIT(A) and direct the Assessing Officer to assess the income of the assessee as offered by him under section 44AD of the Act. **The Grounds of appeal no.2 to 6** are allowed in terms of our aforesaid observations.

10. **The Grounds of appeal no. 1 and 7** being general in nature are dismissed as not pressed.

11. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 24th December, 2021.

Sd/-
(Dr. M.L. Meena)
Accountant Member
Date: 24.12.2021

Sd/-
(Ravish Sood)
Judicial Member

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Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

By Order