

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2483/Bang/2019
Assessment year: 2016-17

The Assistant Commissioner of Income Tax, Central Circle 2, Mangalore.	Vs.	Sri Kanaiya C. Gajra, M/s. Ocean Cargo, D.No.9/118/664, Bhatkal Bazar, Ansari Cross Road, Bunder, Managalore - 575 001. <b>PAN: ALVPG 6648L</b>
APPELLANT		RESPONDENT

ITA No.2624/Bang/2019
Assessment year: 2016-17

Sri Kanaiya C. Gajra, Managalore - 575 001. <b>PAN: ALVPG 6648L</b>	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2, Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Srinivas Kamath, CA
Revenue by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.02.2022
Date of Pronouncement	:	25.02.2022

**ORDER**

*Per Chandra Poojari, Accountant Member*

These are cross appeals by the assessee and revenue against the order of the CIT(Appeals)-2, Panaji dated 26.9.2019 for the assessment year 2016-17.

2. The revenue has raised the following grounds:-

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. The CIT(A) has erred in estimating the income of the assessee @8% as the income is much higher, as income estimated based on the seized material.
3. The CIT(A) has failed to appreciate the fact that the AO has rejected the books of account and estimated the income based on the evidences found in the \*seized material
4. Without prejudice to the above, the CIT(A) erred in not appreciating the fact that the assessee himself has claimed indirect expenses of only Rs.1,89,30,429/- as against Rs.5,94,56,061/- allowed in appeal.
5. Without prejudice to the above, the CIT(A) erred in not considering the fact that assessee failed to adduce evidence for the expenses incurred , for purposes of business.
6. Without prejudice to the above, the CIT(A) erred in not considering the fact that assessee failed to comply with provisions of section 40 and section 40A of I.T. Act.
7. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.”

## 3. The assessee has raised the following grounds:-

1	The impugned orders of the authorities below are opposed to the law and facts of	Rs. 24,68,978 (including interest)
2	The impugned orders are against the provisions of Law/Act and have been made in violation of the principles of natural justice and equity.	Rs. 24,68,978 (including interest)
3	On the facts and circumstances of the case, the Authorities below erred in levying/confirming the additions of Rs. 68,39,417	Rs. 20,68,761 (without 234BC interest)
4	On the facts and circumstances alternatively, the authorities below erred in determining additional turnover of Rs. 2,49,85,974 in addition to turnover declared by Appellant in audited Books of accounts	Rs. 20,68,761 (without 234BC interest)
5	On the facts and circumstances of the case, the Learned CIT(A) erred in determining 8% Net Profit which is purely estimation.	Rs. 20,68,761 (without 234BC interest)
6	On the facts and circumstances, the Authorities below erred in not giving deduction for income declared by the appellant u/s 132(4) of the Act.	Rs. 24,68,978 (including interest)
7	On the facts and circumstances of the case, the Authorities erred in charging interest u/s 234B and 234C of Rs. 4,00,217	Rs. 4,00,217
8	The appellant craves for leave to, add to, delete from or amend the grounds of appeal.	Rs. 24,68,978 (including interest)

4. The facts are that the assessee is a proprietor of M/s. Ocean Cargo engaged in the business of transportation of goods. Assessee filed return of income on 17.10.2016 declaring total income of Rs.44,85,550. There was a search operation u/s. 132 conducted at the residential premises of assessee on 24.11.2015 situated at H.No.156, Mylareshwara Nilaya, Gopala L Block, Gapata Gowda Extension, Shimoga. Survey was also

conducted u/s. 133A on 24.11.2015 at the business premises of assessee at Batkal Bazar, Ansari Cross Road, Bunder, Mangaluru. Various incriminating material of books, documents and cash of Rs.8 lakhs was found. Consequent to search, notice u/s. 153A was issued on 15.9.2016 for AYs 2010-11 to 2016-17. Consequently assessment was framed u/s. 143(3) r.w.s. 153A of the Act.

5. While framing assessment the AO observed that search and survey operations in the appellant's case resulted in detection of large scale of suppression of business income by manipulating the freight collections, inflation of expenses, absence of books of account, suppressing the quantity of consignment transported etc., incriminating documents marked as exhibits KGRA/A1 to KGRA/A13, A/OC/1 to 4 were impounded during the course of survey. During the course of search the appellant was not able to prove any kind of significant administrative overheads. There has been no evidence found to prove that payments have been made to agents of the appellant. No evidence with respect to establishment expenses also have been found. Further, in the statement recorded u/s.,132(4) on 24.11,2015 and u/s.131 on 16.12.2015, the appellant has confessed that, normally 4 per kg. for transportation to Gujarat and Rs.5 per kg. for transportation to Delhi is charged.

6. Accordingly, the AO recomputed the appellant's income by stating that, the total freight collection declared by the appellant as per return is Rs.11,65,76076/, and whereas total quantity of consignment transported was 4,04,463 kgs., each bag weighs 70 Kgs. Hence, AO arrived at the figure of Rs.2,83,12,410 kgs. Freight charges debited to P&L account of Rs

9,31,60,100 reworked by AO to Rs..6,66,24620/- by adopting Rs,2/- per kg. as lorry freight. Accordingly, he was of the view that appellant has inflated the expenses debited to P&L Account on lorry hire itself around Rs.3,65,35,280/- (9,31,60,100 – 5,66,24,820).

7. Further, during the assessment proceedings few examples of seized materials indicating the collection and lorry freight were brought to the notice of the appellant with a proposal to consider the net profit at Rs.2.5 to Rs.3 per kg. to which the assessee raised objections. The AO rejected the appellant's objections stating that for other Overhead expenses such as agent commission, hamali charges, salary and wages appellant has not furnished any bills/invoices or any other evidence in support of such overhead expenditure incurred. However, AO verified the hamali charges by the GC Note seized/impounded and copy of one memo of such book seized and arrived at the conclusion that the expenses claimed by the appellant are not authentic and appears to be cooked up after the search.

8. The AO noted that the return of income and statement of accounts produced during the course of assessment proceedings suffer from various discrepancies in contrast to the findings detected during search. Hence, the AO recomputed the income of the appellant by adopting Rs.5/- per kg. as freight collection and arrived at profit earned is at Rs.2.50 per kg. and accordingly recomputed the total assessed income at Rs:7,07,81,025 by rejecting the appellants audited books of account and income declared in the return of income.

9. Against this, the assessee went in appeal before the CIT(Appeals), who observed as follows:-

“6. I have gone through the assessment order, submissions and arguments put forth, by the AR. I find that the AO has rejected the arguments of the appellant although each instance cited in the assessment order has been replied/ thoroughly explained, and is also extracted at Page no.12 and 13 of the assessment order. The gap between AO's version and appellant is that the AO has failed to recognise that the appellant has to incur further expenses over and above that cited in the Good Consignment Notes, copies of which have been extracted in the order. Thus, I find that the AO has mis-continued the tact resulting in this addition. That the appellant has to further expenses over and above quoted in the Good Consignment Notes has been missed. I, therefore, find that the ends and justice would be met if the Net Profit is computed @, 8%, in keeping with the presumptive taxation rate. Thus, Net Profit could be computed 8%. The appellant gets part relief.”

10. Against this, both the parties are in appeal before us.

11. The contention of the Id.AR is that sustaining the addition by CIT(Appeals) @ 8% of net profit on total receipts is on the higher side. The books are duly audited and declared income has to be accepted as correct and there is no necessity of any further addition on this count.

12. On the other hand, the Id. DR submitted that the books are not reliable. Various discrepancies were found during the course of search action as clearly brought out on record by the AO in his assessment order which is totally overlooked by the CIT(Appeals) and he has given excess relief against the facts of the case.

13. We have heard both the parties and perused the material on record. We have carefully gone through the order of the CIT(Appeals). The AO in his assessment order observed that the seized document KGRA/A-1 and the corresponding invoices/memos will help in understanding the amount of profit the M/s. Ocean Cargo makes in the business of transportation as follows:-

- i) Pages 5 and 6 contain the details of the transactions that have taken place during the period 17 - 30 October 2015. It can be seen here that, for example, on 08,10.2015, through Truck No. RJ 14 GC 4305, M/s Ocean Cargo has transported arecanut of a weight of 14700 Kgs to Delhi. The consignor is SLSA and the consignee is RI. The total payment to be made to M/s. Ocean Cargo by the consignee is Rs.82,320/- whereas the total payment to be made to the lorry owner is Rs. 68250/-.
- ii) For example, on 30.10.2015, through Truck No. KA 31 8449, M/s Ocean Cargo has transported supari of a weight of 20,090 Kgs to Ahmedabad. The consignor is Halagappa Aercanut Traders-and the consignee is Vishnu Pouch Packaging. The total payment to be made to M/s Ocean Cargo by the consignee is Rs. 80,360/- whereas the total payment to be made to the lorry owner by M/s Ocean Cargo is RS:48000/-.
- iii) On 05,11.2015, through Truck No. GJ 1 BY 6663, M/s Ocean Cargo has tray transported arecanut of a weight of 16100 Kgs to Ahmedabad. The consignor Halagappa Arecanut Traders and the consignee is Vishnu Pouch Packaging. The total payment to be made to M/s Ocean Cargo by the consignee is Rs. 64,400/- whereas the total payment to be made to the lorry owner by M/s Ocean Cargo is Rs. 36000/-.
- iy) On 20.08.2015, through Truck No. G3J 7 UU 6852, M/s Ocean Cargo has transported arecanut of a weight of 16100 Kgs to Baroda. The consignor is HAPCOS and the consignee is Dhariwal. The total payment to be made to M/s. Ocean Cargo by the consignee is Rs. 64,400/- whereas the total payment to be made to the lorry owner by M/s Ocean Cargo is Rs. 34400/- .
- v) On 15.6.2015, through Truck No. MH 18 AA 8224 M/s Ocean Cargo has transported arecanut of a weight of 16000 Kgs to Gandhidham. The consignor is HAPCOS and the consignee is Vishnu Exports. The total payment to be made to M/s. Ocean Cargo by the consignee is Rs. 72,000/- whereas payment to be made to the lorry owner by M/s Ocean Cargo is 38,400.
- vi) On 13.07.2015, through Truck No. RJ 04 GA 1328, M/s Ocean Cargo has transported arecanut of a weight of 16000 Kgs

to Gandhidham (4 transactions of 4000 Kgs each). The consignor is HAPOS and the consignee is Vishnu Exports. The total payment to be made to M/s Ocean Cargo by the consignee is Rs. 72,000/- (18,000 \* 4) whereas the total payment to be made to the lorry owner by M/s Ocean Cargo is Rs. 37600/-.

14. The AO noted that from the above transactions M/s Ocean Cargo earns about Rs. 4.50 to Rs. 5.00 per Kg for transportation of consignment. Out of this amount, an amount of approximately Rs. 2.00 is paid to the lorry owner as truck freight.. The balance amount of Rs. 2.50 to Rs. 3.00 per Kg is the profit that is earned by assessee.

15. Based on the documents seized and impounded in KGRA/A.1 to A.13 and A/OC/1 to 4, the entries in the seized and impounded books at Shivamogga and Mangalore were compiled and verified. During the course of search the assessee was not able to prove any kind of significant administrative overheads. It was also found during search that the assessee mainly operates from his residence and all deals are settled through telephone. He has confirmed the same in his statement recorded U/s. 132(4) on 24/11/2015. According to the AO, there has been no evidence found to prove that payments have been made to agents of the assessee. No evidence with respect to establishment expenses also have been found.

16. These documents were confronted to the assessee who has confirmed the discrepancies as follows:-

24.11.2015

“Q.20. Kindly furnish the details of Tariff for supplying supari from Shimoga to different parts of India.

A. For Transporting the supari to Gujarath, I charge Rs 4 per kg and Rs 5 for Delhi.”

10.12.2015

“Q.13. Please explain the entry on 2.10.2015 on page 6 of the above document” (KGRA/A 1)

A. This entry represents the transport of 6 Tons of Supari from HAAPCOS to Vishnu exports located in Gandhidham. The amount of Freight received by the lorry owner is Rs 36,000, Rs.80,000 was received by me on both these transactions at the rate of Rs 5 per Kg. This amount was received by cheque in my ICICI Bank account No.8400 in Mangalore.”

17. On the basis of the above, the AO observed that the total freight collections declared by the assessee as per return is Rs. 11,65,76,076. The total quantity of consignment transported was submitted as 404463 bags. As detected from the seize material discussed above, each bag weighs 70 kgs. hence 2,83,12,410 kgs have been transported. The assessee has computed the freight collections on 65kgs /bag. The freight charges paid debited to the P&L, account is Rs 9,31,60,100/-. Considering that the lorry freight paid is only Rs.2 per kg which amounts to Rs.5,66,24,820/- on 2,83,12,410 transported, the inflated expenses debited to the P&L account on lorry hire itself is around Rs. 3,65,35,280/- (9,31,60,100.5,66.24,820). Hence the AO concluded that there is an inflation of expenses to the extent of Rs.3,65,35,280/- under freight paid charges.

18. From the above findings it was evident that assessee had not disclosed the actual income out of the freight collections. During the course of the assessment proceedings, the assessee was appraised about the findings and a few examples of the seized material indicating the

collections and lorry freight (as discussed in the preceding paras) were brought to the notice of the assessee with a proposal to consider the net profit at Rs. 2.51 to Rs 3 per Kg. The assessee objected to the same vide letter dated 13.11.2017.

19. The assessee's submission was rejected by the AO in view of the findings discussed and for the following reasons:-

a) The following amounts have been debited to the P&L account towards some of the major expenses claimed.

i)	Commission	: Rs 21,61,345
ii)	Hamali	: Rs 60,66,945
iii)	Agents allowance	: Rs.25,20,000
iv)	Salary and wages	: Rs 48,24,000

20. The assessee has not furnished any bills/invoices or any such evidences to support the claim of additional charges incurred towards freight, hamali, local Pickup etc. Nor has any TDS been made. Incidentally the GC notes from April, 2014 to 24/11/2015 (the date of search) do not contain any other incidental charges like hamali commission etc. However the GC notes produced post-search contains an entry "Hamali Charges". This can be verified from a scanned copy of one of the memo book seized dated 20/08/2015 and produced during assessment proceedings dated 4/01/2016 (subsequent to the search).

21. From the above, according to the AO, it is evident that the expenses claimed are not authentic and appears to be cooked up after the search. The only books-maintained are the consignment notes and memo Bill which is inclusive of the source to the destination including door step. The details of the memo books are incorporated in the registers seized in KGRA/A-1, KGRA/A-5 to 8 and A/OC 3 & 4. Since the transport memo books are the

internal consumption of the assessee only, any hidden charges/payments would have been incorporated therein. However no such extra payments are reflected. The assessee's claim during assessment proceedings is without any supporting evidence and therefore rejected by the AO.

22. The AO concluded that the freight charges collected have been suppressed and expenses claimed including freight charges paid are astronomically high without any supporting evidence. From the seized documents and the assessee's own submission during search proceedings, it is confirmed that the assessee collects Rs. 5/Kg as freight and the profit earned is at least Rs. 2.5/kg. Throughout the period from 1.4,2015 till the date of search, the seized memos and GC notes and the corresponding entries in the register KGAR/A1, A/OC 3 & 4 reflect the lorry payments es Rs. 2 per kg. In view of the discrepancies enumerated above, the accounts were rejected and the total assessed income by AO is computed as under:-

Total quantity of consignment transported during the Year as per the memo books maintained And as declared by the assessee	404463 bags
Total weight On which freight is charged is 70 Kg per bag as per the Memo raised	$\frac{404463 \times 70}{28312410}$ Kgs
Freight Collected at Rs. 5/- Kg based on the evidence Gathered	14,15,62,050
Net Profit derived by the assessee after all expenses estimated at Rs.2.5/Kg.	7,07,81,025
Total business income assessed is	7,07,81,025

23. Contrary to this, the CIT(Appeals) estimated income @ 8% of the total receipts which is not correct. The AO had also estimated the income

@ 50% of total receipts. Against this, the CIT(Appeals) made one more estimation and directed the AO to make specific additions towards discrepancies found in the books of account in the course of search action. In the present case, the assessee's books of account are not reliable which do not deduce the true and correct profits therefrom and demonstrate as correct and complete. Therefore the books of accounts are to be rejected. However, estimation of income @ 50% by AO is on the higher side. In this kind of business of assessee it would not result in earning of 50% of net profit. In our opinion, though books of accounts are rejected, estimation of income @ 50% cannot be sustained. In a similar way, estimation of income by CIT(Appeals) @ 8% is also not genuine. The addition is to be sustained only to the extent of discrepancies found in the course of search/survey action over and above the profit declared by the assessee. With these observations, we remit the entire issue in dispute to the file of the AO for fresh consideration.

24. In the result, both the appeals are allowed for statistical purposes.

Pronounced in the open court on this 25<sup>th</sup> day of February, 2022.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 25<sup>th</sup> February, 2022.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.