

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5447/Mum/2019
(A.Y: 2010-11)

Sudhir Mahamunkar 41/12, Vijay Vilas, Vijay Vilas Road, GB Road kavesar, Thane (W) – 400615	Vs.	ITO, Ward – 26(3)(3) Pratyakshakar Bhavan C-11, Room No. 505, 5 th Floor, BKC, Bandra (E) Mumbai – 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJDPM2635F		
Appellant	..	Respondent

Appellant by :	Shri. Kapil Jain.AR
Respondent by :	Shri Rajesh KumarYadav.DR

Date of Hearing	23.03.2022
Date of Pronouncement	28.03.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-38, Mumbai passed 144 and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstance of the case the CIT (A) is not justified in confirming the addition made by AO estimating gross profit at the rate of 5% on*

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turnover (i.e on Rs. 3,97,91,862/-) Rs. 19,89,593/-

2. *Without prejudice to Ground No.1, on the facts and circumstances of the case the CIT(A) and Ld AO failed to appreciate that the appellant has already disclosed gross profit margin 2.92% i.e Rs. 11,60,236/- in return of income and consequently the AO has assessed the aggregate profit margin of 7.92% of turnover.*
3. *Without prejudice to ground NO. 1 & 2 on the facts and circumstances of the case the CIT(A) and the A.O are not justified in treating purchases of Rs. 9,69,231/- as unexplained expenditure and adding to total income u/s 69 of the Act, despite the fact that the profit has already been estimated at 5%.*

2. The brief facts of the case are that the assessee is an individual and works as a distributor of Loop/BPL mobile for sale of mobile Sim cards in the name and style of M/s. Balaji Enterprises. The assessee derives income from business and income from other sources. The assessee has not filed the return of income for the A.Y 2010-11 and the notice u/s 148 of the Act was issued. The assessee has filed the return of income in response to the notice on 10.05.2015 declaring a total income of Rs.3,54,138/-. Subsequently the notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the

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assessee appeared from time to time and submitted the details and the case was discussed. The Assessing officer (A.O) on perusal of the information and the facts find that the assessee has made payment to M/s BPL Communication / Loop mobile of Rs. 3,76,13,456/- in the F.Y.2009-10 and whereas the assessee has claimed Rs. 3,85,82,687/- and therefore the payment of Rs. 9,69,231/- disclosed in the bank statement as I/W clearing was treated as excess payment and a show cause notice was issued. In compliance the assessee has submitted the reply on 08.12.2017 explaining the reasons and also the split of the transactions pertaining to I/W clearing reflected in the bank statement. The A.O dealt on the agreement entered by the assessee and the BPL communication services. Finally the A.O. considering the facts of total payments/ turnover with the BPL has estimated commission income@ 5% i.e Rs.19,89,593/- and disallowance of unexplained expenditure of Rs. 9,69,231/- and passed order u/s 143 r.w.s 147 of the Act dated 26.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has

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confirmed the addition /disallowance made by the A.O and dismissed the assessee's appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the A.O by estimating the income of the assessee being a commission earner at higher side and overlooking the payments made to the BPL/Loop also towards the same transactions which was treated as not allowable expenditure. The Ld AR substantiated the arguments with the information/details and the paper book. Contra, the ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. AR is with respect to commission estimated on payments made to BPL Communication. The Ld.AR contended that the assessee is a small time mobile distributor of Loop/Bpl mobile for sale of mobile sim cards and earned commission income. Whereas the assessee after making the collections from parties used to

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make the deposits in the bank account and against the collections, the assessee was issuing cheques to the BPLmobile communication/Loop. The assessee has incurred expenditure for earning the commission income and was claimed in the profit and loss account. The Ld.AR referred to the profit and loss account at page 17 of the paper book disclosing the market retail sales and sales made and the Gross profit was worked out @ 2.92%. The contention of the Ld. AR that the A.O estimating the income@ 5% on total sale transactions of Rs. 3,97,91,862/- is on higher side and cannot be accepted.

6. The assessee runs a repairing unit and the income was disclosed in the profit and loss account. The Ld. AR referred to the distribution agreement at page 19 of the paper book and the series of submissions made before the A.O in the Assessement proceedings. The Ld. AR demonstrated the commission margin of the similar companies at page 63 to 67 of the paper book. In respect of the second disputed issue with respect to disallowance of expenditure, the contentions of the Ld. AR that these are the payments made to BPL /loop mobile. Whereas

the A.O is of the opinion that the wording in the bank statement is not clearly mentioned and was shown as I/W clearing. The Ld. AR referred to the page 78 to 86 of the paper book were the payments were disclosed and the cheques are issued in the name of the Loop mobile India. The claim of the assessee is that these payments have been made to the BPL/ loop service and part of the total turnover.

7. We find the contentions of the Ld.AR are realistic (i) estimation of income and (ii) disallowance of expenditure. Whereas in respect of disallowance of expenditure made by the A.O, we are convinced with the explanations of the Ld. AR duly supported by the evidence in the paper book that these payments are made to BPL/Loop and part of the turnover which cannot be disputed and we direct the A.O. to delete the addition. Whereas in respect of the estimation of income on the total turnover of the assessee. We find that the assessee has filed the return of income disclosing the GP rate @ 2.92% and further addition @ 5% by the A.O. is on higher side. We considering the overall facts, circumstances and material evidence restrict the addition to the extent of 2% and modify

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the Ld.CIT(A) order sustaining the addition @ 2% as against 5% and partly allow the ground of appeal of the assessee.

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

Order pronounced in the open court on 28.03.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.03.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai