

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'DIVISION BENCH', KOLKATA  
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 319/PAT/2018  
Assessment Year: 2015-2016**

**Aranya Clearers,.....Appellant**  
**C/o. Ram Narayan Sharma,**  
**Ground Floor, Laxmi Market,**  
**Kiranighat, Gaya-823001, Bihar**  
**[PAN: AASFA7043H]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-3(1), Gaya,**  
**R.J. Palace, S.P. Road, Gaya-823001, Bihar**

**Appearances by:**

*Shri A.K. Rastogi, Sr. Advocate, appeared on behalf of the assessee*  
*Shri Sanjay Mukherjee, CIT(D.R), appeared on behalf of the Revenue*

Date of concluding the hearing : March 23, 2022  
Date of pronouncing the order : April 5, 2022

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Patna-1 dated 31.08.2018 passed for the assessment year 2015-16.

2. The assessee has taken seven grounds of appeal. However, its grievances revolve around three issues.

3. With the assistance of the Id. representatives, we have gone through the record carefully. A perusal of the assessment order would reveal that the assessee has filed its return of income on 31.10.2015 declaring total income of Rs.8,24,100/-. Ex-parte assessment order was passed on the basis of best judgment of the Id. Assessing Officer under

section 144 read with section 143(3) of the Income Tax Act. Ld. Assessing Officer has determined the taxable income of the assessee at Rs.61,50,860/-. He made three additions to the income of the assessee. The computation made at the end of the assessment order reads as under:-

<i>Total income as per return</i>	<i>Rs.8,24,100/-</i>
<i>Addition: (i)Contract receipt/fees mismatch a discussed above in para 4.1</i>	<i>Rs.7,52,789/-</i>
<i>(ii)Disallowance of expenses as discussed above in para 4.2</i>	<i>Rs.7,60,359/-</i>
<i>(iii)Disallowance on account of non-deduction of TDS as discussed above in para 4.3</i>	<i>Rs.38,13,610/-</i>
<i>Total assessed income</i>	<i>Rs.61,50,858/-</i>
<i>Total assessed income (rounded off u/s 288A of the I.T. Act, 1961)</i>	<i>Rs.61,50,860/-</i>

*Accordingly, the assessment order is passed u/s 144 r.w.s. 143(3) of the Income Tax Act, 1961 and the total income is assessed at Rs.61,50,860/-. Issue demand notice & challan, copy of order, charge interest as per law and give credit of prepaid taxes, if any".*

4. On appeal, ld. first appellate authority has scaled down the addition for item no. 2, i.e. out of disallowance of expenses and rest of the two issues, he concurred with the ld. Assessing Officer.

5. With regard to the first item of addition, it is observed that in the 26AS Statement, total receipts have been shown at Rs.5,75,80,629.86, whereas the assessee has shown receipt of Rs.5,68,27,840/-. There was a difference of Rs.7,52,789/-. This difference has been added in the total income of the assessee. Ld. Counsel for the assessee submitted that since it was an ex-parte assessment order, therefore, efforts to reconcile the above could not be achieved. He prayed that this issue be remitted back to the file of the Assessing Officer for a fresh inquiry and to determine whether any actual difference is available or not. On the other hand, ld. CIT(D.R.) relied upon the order of revenue authorities.

6. On due consideration of the above fact, we find force in the contention of the Id. Counsel for the assessee. We remit this issue to the file of the Id. Assessing Officer for re-adjudication. Id. Assessing Officer would determine whether there is actual difference in the total receipts which has element of income. The assessee is directed to submit the complete details for establishing the nexus.

7. As far as second item is concerned, Id. Assessing Officer took note of different expenditures debited by the assessee in the accounts and such expenditures have been noted under eight Heads. Since no details were submitted in support of these expenditures, he made ad hoc disallowance at 25% of the total expenditures, which has been worked out at Rs.7,60,359/-.

8. On appeal, the Id. CIT(Appeals) has scaled down this disallowance to 15%. On due consideration of the above details, we are of the view that there is no dispute that whenever a disallowance is to be worked out on the basis of an estimation, then some guesswork will always be involved. In the present case nature of expenses are salary & wages, staff welfare expenses, travelling, telephone, etc. There might be some element of personal nature in some of the expenditure. But again that element would not be estimated at 15%, because certain expenditure namely demurrage to Railway, advertisement, salary & wages are of such a nature, where no element of personal nature could be worked out. Therefore, after taking into consideration the totality of expenditure, we direct the Assessing Officer to work out a disallowance at 10% of total expenditure, i.e. 10% of RS.30,41,436/- is confirmed.

9. As far as the third item is concerned, it reveals the disallowance of Rs.38,13,610/-. This disallowance was made by the Id. Assessing Officer with the aid of section 40(a)(ia) of the Income Tax Act on the ground that the assessee failed to detect the TDS on the rent paid by it. Id. Counsel

for the assessee submitted that rent was paid to Railways i.e. almost to the Government Undertakings and this recipient must have recognized those receipts as their income and if the recipient has recognized the receipts as their income, then no disallowance is to be made on the basis of that TDS was not deducted. He made a reference to the decision of the Hon'ble Supreme Court in the case of CIT -vs.- Vatika Township Pvt. Limited (367 ITR 466). The ld. CIT(DR), on the other hand, submitted that it is very difficult for the Assessing Officer to collect the details from the recipients, whether they have offered this amount for taxation or not? Therefore, the burden should be put upon the assessee to submit such details for the satisfaction of the ld. Assessing Officer.

10. We have duly considered this contention. We are of the view that ld. Assessing Officer has statutory powers to call for such details from the recipients. It will be very difficult for the assessee to collect the details from the Government Undertakings and then submit it to the ld. Assessing Officer. Therefore, we do not find force in this contention of ld. CIT(DR). We set aside this issue to the file of the ld. Assessing Officer for fresh adjudication. The Assessing Officer shall exercise his statutory powers to direct the recipients to submit the requisite details, which can be verified by him, i.e. whether the rental receipts in their hands suffered tax or not. After recording a specific finding to this effect, he will re-adjudicate this issue whether any disallowance is called for under section 40(a)(ia) or not.

**11. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on March 5<sup>th</sup> April, 2022.

Sd/-

**(Girish Agrawal)  
Accountant Member**

***Kolkata, the 5<sup>th</sup> day of April, 2022***

Sd/-

**(Rajpal Yadav)  
Vice-President (KZ)**

- Copies to :
- (1) **Aranya Clearers,  
C/o. Ram Narayan Sharma,  
Ground Floor, Laxmi Market,  
Kiranighat, Gaya-823001, Bihar**
  - (2) **Income Tax Officer,  
Ward-3(1), Gaya,  
R.J. Palace, S.P. Road, Gaya-823001, Bihar**
  - (3) **Commissioner of Income Tax (Appeals), Patna-1**
  - (4) *Commissioner of Income Tax-*
  - (5) *The Departmental Representative*
  - (6) *Guard File*

**TRUE COPY**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**