

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member  
AND  
Shri Laxmi Prasad Sahu, Accountant Member**

<b>ITA No.413/Hyd/2019</b>		
<b>Assessment Year: 2010-11</b>		
Sri Harijinder Singh, Hyderabad.  PAN : ADUPS9938C	Vs.	The Deputy Commissioner of Income Tax, Circle 9(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Deepak, CA and Shri Pawan Kumar Gorti, CA	
Revenue by:	Shri T. Sunil Goutam.	
Date of hearing:	28.04.2022	
Date of pronouncement:	28.04.2022	

**ORDER**

**Per Laliet Kumar, J.M.**

This appeal is filed by the assessee feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 7, Hyderabad dt.31.10.2017 for the assessment year 2010-11 on the following grounds :

1. *That on the facts and circumstances, the order the of the Learned Commissioner of Income-tax (Appeals) - 7, Hyderabad [Ld. CIT(A)] and Learned Deputy Commissioner of Income-tax, Circle 9(1), Hyderabad [Ld. AO] are erroneous and bad in law.*

*2. That on the facts and circumstances of the case, the Ld. CIT (A) erred in confirming the addition @ 3% on Rs.1,97,43,380 made by the Ld. AO.*

*3. That on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the said addition on the premise that rental hire income was not declared on Rs. 1,97,43,380.*

*4. The Ld CIT(A)/ Ld. AO completely ignored the submissions of the Appellant that, it. was only an accounting adjustment, as such parties are associated and the hire income has been excess deducted from Kesoram Cements alone.*

*5. The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”*

4. The brief facts of the assessment order are that assessee is an individual stated to be deriving income from transportation business. Assessee filed his return of income for A.Y. 2010-11 on 24.09.2010 declaring total income at Rs.35,58,680/-. Subsequently, assessment was completed u/s 143(3) on 19.12.2012. Thereafter, order u/s 263 was passed on 16.06.2014 determining the total income at Rs.40,61,320/-. Accordingly, the assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 263 of the Act on 15.02.2016 interlia by making an addition of Rs.5,92,300/- towards income earned from commission of transport bussiness.

5. Aggrieved by the order of Assessing Officer, assessee carried the matter before ld. CIT(A) who rejected the appeal of the assessee by observing as mentioned at Para 6 of the order to the following effect :

*“6. I have considered the submissions of the appellant and findings of the Assessing Officer carefully. The Assessing Officer observed that the appellant*

*has not disclosed commission @ 3% on Truck Hiring income of Rs.1, 97,43,380/- from seven parties listed by the Assessing Officer at Para 3.0 of the assessment order. When questioned to the assessee, the appellant stated that the commission receivable from these parties had actually come from Keshoram Gupta, one of the parties to whom the assessee is doing business and getting commission. The above claim of the assessee was not substantiated during the course of assessment proceedings as well as appellate proceedings. The seven parties are stated to be sister-concerns / connected with Keshoram Gupta. The appellant did not produce any documentary evidence in support of its claim. Merely saying that the income receivable from seven parties are covered under the income received from Keshoram Gupta is not enough for acceptance. There is no reason why the appellant has not received any commission from these 7 parties when the work has been for them. The rate of commission was stated to be 3% of truck-hire income. Therefore, the Assessing Officer is factually correct in bringing to tax the' commission receivable from these 7 parties. Thus, the addition made by the Assessing Officer is confirmed."*

5. Aggrieved with the aforesaid order of Id.CIT(A), assessee is now in appeal before us.

6. Before us, it is the case of the assessee that no efforts were made by the Assessing Officer or the first appellate authority to verify whether the assessee has received any commission from the alleged seven parties mentioned in assessment order at Page 3. Further, it was also submitted that 3% rate applied on turnover of these seven persons by the lower authorities was without any basis. It was submitted that the assessee is neither received the commission from these parties nor the rate of 3% can be applied on turnover.

7. On the other hand, the Id.DR had submitted that the order passed by lower authorities are required to be upheld.

8. We have heard the rival contentions of both the parties and perused the material available on record. The issue in the present appeal is whether the assessee had received commission @ 3% from the

alleged seven parties or not to the extent of Rs.5,92,300/-. In our view, though, it is the duty of the Assessing Officer to bring on record whether the assessee has received commission from those alleged parties or not, however, the case remains that during the year under consideration, the lower authorities have brought on record that those seven parties are related to one Keshoram Gupta and there were transport activities connected with the assessee which had resulted in to turnover of Rs.1,97,43,380/- and despite that assessee had not been produced any other persons to rebut the finding of Assessing Officer. However, as the case may be, without going into much details and merit, as the quantum involved in the present case, is small and considering the totality of the facts, we restrict the addition to an extent of Rs.2,92,300/- and thereby grant relief of Rs.3 lakhs to the assessee. We have done the same due to the peculiar facts of the case and further no efforts were made by the Assessing Officer for bringing on record any positive evidence to show that in a comparable case like assessee had earned commission on hiring of trucks at the rate of 3%, moreover the commission of 3% is quite high and therefore, considering the present scenario, we have granted relief of Rs.3 lakhs to the assessee. In light of the above discussion, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 28<sup>th</sup> April, 2022.

Sd/- <b>(LAXMI PRASAD SAHU)</b> <b>ACCOUNTANT MEMBER</b>	Sd/- <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 28<sup>th</sup> April, 2022.

***TYNM/sps***

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2	DCIT, Circle 9(1), Hyderabad.
3	CIT(A)-7, Hyderabad.
4	PCIT-7, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*