

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 537/JP/2019
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. SMS-AAMW Tollways Pvt. Ltd. B-39, Farmers Aparment, Sector-13 Rohini, Delhi- 85	बनाम Vs.	The DCIT Central Circle-3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 7418 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 630/JP/2019
निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT Central Circle-3 Jaipur	बनाम Vs.	M/s. SMS-AAMW Tollways Pvt. Ltd. B-39, Farmers Aparment, Sector-13 Rohini, Delhi- 85
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 7418 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by: Shri Prithviraj Meena, CIT

सुनवाई की तारीख / Date of Hearing : 28/06/2022
उदघोषणा की तारीख / Date of Pronouncement: 13/07/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals are cross appeals filed against the order of the ld. CIT(A)-4, Jaipur dated 28-02-2019 for the assessment year 2012-13 wherein both the parties have raised following grounds of appeal.

ITA No. 537/JP/2019 – Assessee

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has grossly erred in confirming addition of Rs.3,14,08,494/- by applying estimated rate of 8% on alleged undisclosed Toll Receipts of Rs.39.26 crores arbitrarily.

1.1 That the ld.CIT(A) has further erred in confirming the impugned addition by applying profit rate of 8% when the assessee itself has declared NP of 14.00 crores on such undisclosed toll receipts, thus it tantamount to double taxation of the same. Therefore, the addition so confirmed by ld. CIT(A) on the very same papers deserves to be deleted.”

ITA No.630/JP/2019 - Revenue

“1. Whether on the facts and in the circumstances of the case and in law the ld. CIT(A) is justified in deleting the addition of Rs.22,11,97,623/- made by AO on account of undisclosed toll receipts as per seized documents.

2. Whether on the facts and in the circumstances of the case and in law the ld. CIT(A) is justified in considering only G.P. Rate while the entire amount of toll receipts were unaccounted.

3. Whether on the facts and in the circumstances of the case and in law the ld. CIT(A) is justified in directing the revised return of assessee for this year wherein the income was reduced by Rs.1,37,31,490/-. However, the tax audit was made before foiling original return of income which has been ignored by the ld. CIT(A)”

Brief facts of the case are that the assessee, a private limited company, is engaged in activity of collection of toll from the commercial vehicles entering in the state of Delhi. The assessee company filed original return of income at Rs. 4,46,36,280/- and thereafter filed revised return of income at Rs. 3,09,04,790/-. Subsequently search and seizure action was conducted on MRS group on

17.07.2013, wherein assessee company is also one of the member. During the course of search statement of Shri Megh Raj Singh Shekhawat, one of the key person, was recorded wherein he admitted undisclosed income in the different hands inter-alia including undisclosed income totalling Rs. 35 crores in the hands of assessee company (Rs. 14 crore for A.Y. 2012-13 and Rs. 21 crore for A.Y. 2013-14), on the basis of various documents found and seized during the course of search. Accordingly, the assessee filed return of income in response to notice u/s 153A totalling Rs. 17,09,04,790/- which includes additional income of Rs. 14 crores. Ld. AO determined the undisclosed receipts at Rs. 39,26,06,177/- on the basis of seized documents and thereafter observed that assessee has not furnished any substantial detail in support of its claim regarding expenses against these unrecorded toll receipts and thus whatsoever expenses are there, these are already claimed. After giving this observation, the AO observed that whole of the unrecorded toll receipts of Rs. 39,26,06,177/- is unrecorded income and considering that assessee company has already surrendered income from unrecorded toll receipts amounting to Rs. 14 crores during the year under consideration, the AO added the balance amount of Rs. 25,26,06,177/- as income of the assessee.

2. Ld. CIT(A) has considered the argument of the ld. AR and also perused the assessment order. The ld. AR has mainly argued that during the course of

assessment proceedings, the appellant has submitted the estimated details of expenditure incurred and further submitted that unrecorded receipts cannot be considered as unrecorded income in toto and unrecorded income has to be estimated on a reasonable and fair basis give consideration for the expenses incurred on earning such unrecorded receipts, which are inevitable. Regarding evidence of unrecorded expenses allegedly not available in the seized document as indirectly referred by the AO, it was submitted that in fact even the details of day-to-day receipts of various naka were available only for the period from 02.07.2013 to 15.07.2013 as per exhibits available in the paper pages 35 to 48. For this very period, the details of expenses are also evidenced on these pages. Accordingly, evidences of receipts as well as expenses both are clearly appearing and visible in these pages for the aforesaid period on day-to-day basis. For the remaining period, no record of day-to-day toll receipts of different specific toll naka and simultaneously also no record for expenditure incurred was seized. However, it is only the summary sheet of the receipts of the various months which were seized by the authorized officers and at that time corresponding details of expenditure were not seized. Merely because of these circumstances, it cannot be said that no expenditure was incurred for earning these unrecorded receipts. Considering the various decisions cited by the Id. AR and facts as well as circumstances of the case, the Id. CIT(A) held that unrecorded receipts cannot be added in toto as income of

the assessee and the only the profit embedded therein need to be added, which was estimated by Id. CIT(A) at 8% considering the past records and profit results of the assessee company, which comes to Rs. 3,14,08,494/-. However, Id. CIT(A) also observed that he is not inclined to give benefit of telescoping of Rs. 14 crores so offered by the assessee in its return of income as one to one relationship with the seized documents are neither pointed out nor established by the Id. AR and accordingly Id. CIT(A) separately added the income of Rs. 3,14,08,494/- from the suppressed turnover, separately over and above the additional income of Rs.14 crore offered by the appellant on such suppressed turnover, in the return of income.

3. The department is in appeal against the relief given by the Id. CIT(A) by not considering the receipt as income and only treating profit element @ 8% of the unrecorded receipts as the income and thereby only partly sustaining the addition to the extent of Rs. 3,14,08,494/-. On the other hand, the appellant company is in appeal against the addition of profit element of Rs. 3,14,08,494/- estimated at 8% on unrecorded receipts being made separately over and above the income of Rs. 14 crore from these unrecorded receipts so offered by the appellant company in its return of income.

4. It is seen that exhibit 17 of annexure AS contain the details / summary of toll collection from which unrecorded toll receipts was determined at Rs.39,26,06,177/-, on which there is no dispute. The AO in its order has

considered these unrecorded receipts as unrecorded income in toto by just mentioning that assessee has not furnished any substantial in support of its claim of expenses. Detailed submission have been given by Id. AR before us which was also given before the Id. CIT(A). The Id. AR has argued that firstly details of expenses were submitted before the AO, which were submitted by considering the requirement of the expenses for earning such toll receipts. As regards evidence of expenditure allegedly not available in the seized documents, it was submitted that such evidence of expenses is available for the period from 02.07.2013 to 15.07.2013 i.e. the period for which the evidence of receipts of different toll naka are available. It was brought to our knowledge that in fact details of receipts as well as expenses of different toll naka were available for this period. It was further stated by the Id. AR that neither any details of day-to-day toll collection receipts of the various centres were available for entire year nor such details of the expenses were part of the seizure. However, in respect of toll receipts, summary sheet of the various months were taken as part of the seizure, whereas expenses for these periods were not part of the seizure and merely because such expenses were not taken as part of the seized document, it cannot be said that no expenses were incurred on earning the unrecorded receipts. Accordingly Id. AR argued that finding of the Id. CIT(A) is correct to the extent that unrecorded receipts cannot be

directly added as unrecorded income and it is only the profit element embedded therein which need to be considered.

5. On the other hand, the Id. DR contended that the books of accounts of the assessee were duly audited and assessee has failed to demonstrate as to which of the expenses found recorded in the seized documents and were not recorded in the books of accounts nor any such details were produced before the AO therefore action of the AO in making addition of the entire undisclosed receipts is correct. Accordingly he placed full reliance on the order of AO.

6. We have considered the arguments of both the sides and perused the material placed available in record including the paper books filed by the assessee. It is settled legal position that unrecorded receipts found during the course of search or otherwise cannot be just added in toto and it cannot be considered as unrecorded income in toto unless there are evidence to that effect. The Id. AR has referred to the decision of Hon'ble Gujarat High Court in the case of CIT Vs. President Industries (supra) wherein it has been held that entire sales could not be added as income but the addition could be made only to the extent of estimated profit embedded in these sales. Hon'ble ITAT Ahmedabad Bench in the case of M/s Rameshwar Textile Mills Vs. JCIT (supra) has taken the similar view and followed the decision of Hon'ble Gujarat High Court. Similar view was expressed by Hon'ble Gujarat High Court in another case namely CIT Vs. Gurubachan Singh

(supra). Our attention was drawn by the Id. AR towards the various decisions of Hon'ble ITAT Jaipur Bench namely GulamFarukh Ansari Vs. ACIT (supra) and also DCIT Vs. PaharganjGrahNirmanSahkariSamiti Ltd. &Ors. (supra) wherein profit was estimated on the unrecorded receipts / sales and same was added as income. Considering the various decisions and the facts and in the circumstances of the case, it is held that the profit element embedded in the unrecorded receipts has to be considered as income and not the entire unrecorded receipts. Accordingly, appeal of the revenue on these grounds is dismissed.

7. Now coming to the appeal of the appellant company, it is seen that appellant company has offered Rs. 14 crores as undisclosed income earned out of unaccounted toll business. The Id. CIT(A) has estimated the unrecorded profit of Rs. 3,14,08,494/- @ 8% on unrecorded receipts of Rs. 39,26,06,177/-. However, Id. CIT(A) has observed for not giving benefit of telescoping of Rs. 14 crore so shown by the appellant in its return of income by mentioning that one to one relationship has not been pointed out and has not been established. Ld. AR has argued that unaccounted income so offered in the return of income amounting to Rs. 14 crore is after correlating various papers and documents found during the course of search and this income so offered is out of under recorded toll collection business. It was submitted that Id. CIT(A) has failed to appreciate the fact that such income is the net profit earned out of under recorded toll collection business thus

no further addition could be made more particularly when the ld. CIT(A) also not estimated the income more than the amount of profit declared by the assessee on such undisclosed toll receipts. On careful consideration of the argument of ld. AR and order of ld. CIT(A) it is seen that the appellant is in business of toll collection and during the course of search evidence of under recording of toll collection was admittedly found. The appellant has offered net profit of Rs. 14 crores in its return filed in response to notice u/s 153A and has stated it is earned out of its under recorded toll collection business. The ld. CIT(A) has rightly estimated the income from such unrecorded toll collection receipt @ 8% of the unrecorded receipts at Rs. 3,14,08,494/-. However, there is no merit in the finding of the ld. CIT(A) that this amount is to be added separately and no benefit of telescoping is to be given. It is seen by us that when the appellant has itself offered Rs. 14 crores as income from such unrecorded receipts which is quite more than the estimation of profit so made by ld. CIT(A), therefore separate addition of the aforesaid amount over and above the amount of Rs. 14 crore so declared in the return will tantamount to double addition of the same income and therefore, the same is hereby deleted. Accordingly, the appeal of the appellant company is allowed.

8. Now coming to departmental ground of appeal No. 3, it is seen that department has challenged the action of ld. CIT(A) in accepting the revised return of income filed by the appellant before the AO. Brief facts related to the issue are

that original return of income at Rs. 4,46,36,280/- was filed on 29.09.2012 and thereafter revised return at Rs. 3,09,04,790/- was filed on 03.07.2013. Thereafter search was conducted on 17.07.2013. Return in response to notice u/s 153A was filed on 23.01.2015 at Rs. 17,09,04,790/- inclusive of additional income of Rs. 14 crore. In the revised return two items namely amortization of toll modernization expenses of Rs. 1,37,48,673/- and preliminary expenses written off amounting to Rs. 34,642/- were considered which were inadvertently omitted to be considered in the original return. The AO did not consider the revised return by observing that the return was filed after the intimation u/s 143(1) was issued on 18.05.2013. The ld. CIT(A) allowed the appeal of the appellant company by considering direct judgement of Gujarat High Court namely CIT Vs. Hingiri Foods Ltd. 333 ITR 508 wherein the Hon'ble Court has held that if after the issuance of an intimation, a revised return is filed u/s 139(5), it is incumbent upon the AO to process the revised return and amend the intimation issued u/s 143(1)(a) on the basis of revised return. The Hon'ble Court has also held that an intimation u/s 143(1)(a) of the Act cannot be equated with an assessment framed u/s 143(3) of I.T. Act. Considering the above decision, another decision namely S.R. Koshti Vs. CIT 276 ITR 165 and also decision of coordinate Jaipur bench of ITAT in the case of ACIT Vs. Kiran Infra Engineering Ltd., ld. CIT(A) ordered to consider the revised return and income shown therein. The department is in appeal before us. Same argument has

been taken as mentioned in the assessment order. We have gone through the facts of the case and legal position on the issue under consideration. Considering the various decisions as referred by the Id. AR and also considered by Id. CIT(A) and there being no contrary decision so cited on behalf of revenue, we find no infirmity in the order of Id. CIT(A) particularly when the revised return was filed within the statutory time limits provided under the Act. In view of the above discussion the ground of appeal taken by the revenue is rejected.

9. In the result appeal filed by the assessee is allowed and that of the revenue is dismissed.

Order pronounced in the open court on 13 /07/2022

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /07/2022

*Mishra

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

1. The Appellant- M/s. SMS Tollways Pvt. Ltd.
2. प्रत्यर्थी / The Respondent- DCIT/ ACIT, Central Circle- 3, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 537/JP/2019)

आदेशानुसार / By order,

Asstt. Registrar