

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1575/DEL/2020
[Assessment Year: 2011-12]**

Surender Kumar, G-4/210, Ground Floor, Sector-16, Rohini, Delhi-110089. PAN- RFPK7443K	<u>Vs</u>	ACIT, Circle-37(1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by		Shri Dinesh Mohan Sinha, Adv.
Department represented by		Shri B.M. Singh, Sr. DR
Date of hearing		30.01.2023
Date of pronouncement		21.02.2023

ORDER

PER N.K. CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 28.02.2020 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-13, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2011-12.

2. In the instant case the Assessee claimed to be a trading agent dealing with food-grains as general commission agent (code 0301) in the name and style of M/s J.B. Agro India and by filing its return of income electronically on 29.9.2011 for the assessment year under consideration declared an income of Rs. 1,93,000/- and had shown commission income of Rs. 6,88,348/- and interest income of Rs. 16,990/- in its P & L account section.

2.1 However, on the basis of an information received from the Investigation Wing, New Delhi to the effect that Assessee has maintained a current account in Punjab National Bank, Sector-7, Rohini, Delhi, being a/c no. 3028002100159649, opened on 29.05.2010 and closed on 6.6.2011 in the name of his proprietorship firm M/s J.B. Agro India and from the bank statement of the Assessee it was found that the credit entries in that account were payments received through RTGS which were withdrawn on the same day or next day by cash. Total Rs. 5,94,33,374/- was found credited during the financial year under consideration.

It was also learnt that the Assessee also maintained other bank accounts in the name of his proprietorship firm and made substantial credits/deposits, however not reflected the credits of Rs. 26,09,27,206/- in its P&L A/c.

2.2 Consequently, the AO by recording the reasons for initiation of proceedings u/s 147 of the Act, issued an notice u/s 148 of the Act to the Assessee on 31.3.2018, which was duly served upon the Assessee. However, the same remained un-complied with and no return of income was filed by the Assessee in response to the said notice initially.

Thereafter, a notice u/s 142(1) of the Act was also issued to the Assessee on 24.2.2018 whereby the Assessee was requested to furnish the copy of ITR in response to the notice u/s 148 of the Act, but still the Assessee did not respond. Subsequently, again notice u/s 142(1) of the Act was issued to the Assessee, which also remained un-complied. Ultimately, vide notice dated 13.12.2018 the Assessee was show caused to explain the credit in its bank accounts.

2.3 Subsequently, the Assessee by filing its return of income for the assessment year under consideration on 18.12.2018, complied with the terms of notice u/s 148 of the Act.

2.4 On perusal of the return filed by the Assessee, it was observed by the AO that the Assessee has actually filed the return of income same as original one. The Assessee also filed its monthly VAT return for the period from 1.5.2010 to 31.3.2011, according to which the Assessee was engaged in the sales of rice and paddy and the turnover of 11 months as reflected from the VAT return was Rs. 27,47,50,512/- , but in his audited accounts or return of income, he did not disclose any trading of rice and paddy. In form no. 3CD as well as return of

income, the Assessee disclosed himself as a general commission agent. On confrontation with regard to the said discrepancies and the huge transaction in undisclosed bank accounts, the Assessee filed copy of return filed u/s 148 of the Act, computation of income and TAR. The Assessee also submitted written reply and sales and purchase, sundry creditors and sundry debtors as on 19.12.2080. By filing its reply the Assessee claimed that he had been engaged in the commission business during the period under consideration, when he had procured the order from various parties and goods have been supplied directly procuring from the farmers or in some cases from other parties. In exchange of providing the services, he had earned his commission and all the said transactions have been revealed in his audited accounts or during his VAT registration.

2.5 The said contention of the Assessee was not found tenable by the AO on the following reasons:

“The assessee's contention is completely untenable for the following reason:

- 1. The assessee's disclosed business in ITR and TAR not matching with the VAT returns.*
- 2. The turnover as disclosed through VAT returns is not reflected in ITR or TAR.*
- 3. The huge transactions in undisclosed bank accounts cannot be sustained by his audited accounts.*

4. VAT returns don't raise any tax liability for the assessee for so called trading of exempted items.

5. The details provided in the lists of sundry creditors and sundry debtors initially were very cryptic, as only the name of the creditor or the debtor along with the city / town name was given, which can't be verified. The details of the addresses have finally been provided at such a fag end,, which can best be defined as an attempt to prevent the Revenue to verify the same. However attempts have been made to physically verify the creditors/ debtors in Delhi wherever little details have been provided, but the Departmental Inspector deputed to verify couldn't find any such names/ agencies in the given addresses. Even the physical verification at his alleged place of business at Tile Bazar didn't yield any support of commission business activities.

6. The assessee couldn't produce/ submit any other documents/ details to explain such huge transactions, difference of turnover & nature of business between the business disclosed in ITR & TAR and the other one revealed from VAT returns, reason for immediate cash withdrawal, maintaining of so many accounts etc., if he was actually engaged in the business of general commission agent. Most importantly, the assessee couldn't explain as to why it had become necessary for him to bear the hassle of procuring the goods and selling them out physically, involving huge monetary transactions, as well as other expenses just to earn the commission at a pittance (if calculated on the basis of the total credits/ deposits in his bank accounts

The summary of the cash deposits and other credits in all the bank accounts maintained by the assessee or its proprietorship firms during the F.Y. 2010-11, pertaining to A.Y. 2011-12, as per the information available on records is as under:

Name of the Bank	Name of the A/c Holder	A/c No.	Total cash deposits & credits during

			<i>the F.Y. 2010-11 (Rs.)</i>
<i>HDFC Bank</i>	<i>M/s J.B. Agro India</i>	<i>09312560000515</i>	<i>5,51,63,230</i>
<i>HDFC Bank</i>	<i>M/s J.B. Agro India</i>	<i>01952560009140</i>	<i>10,98,42,460</i>
<i>Andhra Bank</i>	<i>M/s J.B. Agro India</i>	<i>113511100000672</i>	<i>7,36,14,415</i>
<i>Nainital Bank Ltd.</i>	<i>Surendra Kumar</i>	<i>073200000000411</i>	<i>8,50,952</i>
<i>Punjab National Bank</i>	<i>M/s J.B. Agro India</i>	<i>3028002100159649</i>	<i>5,94,33,374</i>
<i>Union Bank of India</i>	<i>M/s Public Warta</i>	<i>578301010050167</i>	<i>3,78,674</i>
<i>ING Vysya Bank</i>	<i>M/s J.B. Agro India</i>	<i>612011001733</i>	<i>1,85,23,000</i>
<i>Total</i>			<i>31,78,06,105</i>

As discussed above in details, I am not at all satisfied about the correctness and completeness of the accounts of the assessee, which was supposedly the basis of the arriving at the total income of the assessee and filing of his original return or the return filed in response to the notice u/s 148 of the Act. As a result, I have no option but to proceed to make the assessment of the total income of the assessee, as prescribed in the section 144 r.w. section 145(3) of the Act.”

2.6 The Assessing officer after considering all the factual aspects and examination of the bank accounts maintained by the Assessee either in his own name or in the name of proprietorship firm, wherein the Assessee deposited Rs. 31,78,06,105/- during the year under consideration, treated the entire bank deposits/ credit entries in the bank account of the Assessee and his proprietorship firm as annual

turnover which comes to Rs. 31,78,06,105/- and assessed the income of the Assessee from his business @ 8% of the annual turnover amounting to Rs. 2,54,24,488/-.

3. The Assessee being aggrieved challenged the assessment order on the basis of reopening the case u/s 147/148 of the Act as well as on merits before the learned Commissioner. The learned Commissioner not only sustained the reopening of the case u/s 147/148 of the Act but also the addition on merits by dismissing the appeal of the Assessee.

4. The Assessee being aggrieved is in appeal before us.

5. Before us, the Assessee by filing additional grounds of appeal raised the issue that in the instant case the return of income was filed on 18.12.2018 in response to the notice u/s 148 of the Act and on the very same day the notice u/s 143(2) of the Act was issued to the Assessee whereby the Assessee was asked to attend the office of the Assessing officer on 19.12.2018 at 11.35AM in person or by authorized person and to produce documents, accounts and any other evidence on which the Assessee may rely in support of its return filed. The Assessee further claimed that as the Assessee had filed its return of income on 18.12.2018 and on the very same day the notice u/s 143(2) of the Act was issued, which goes to show that the AO before issuing notice u/s 143(2) of the Act has not applied his mind properly

and, therefore, the assessment order itself is liable to be quashed being void-ab-initio. The Assessee further claimed that even otherwise the authorities below by applying the gross profit rate @ 8% of the annual turnover, have not given any logical or justifiable reason and also not considered the profit earned by the Assessee from the business of general commission agent. The Assessee further requested that if the order is going to be affirmed on merits, then a reasonable gross profit can be determined.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. Both the parties alternatively submitted that a reasonable gross profit can be applied by taking into peculiar facts and circumstances of the case. We observe from the order passed by the authorities below that the amount of Rs. 31,78,06,105/- in various accounts of the Assessee was not disclosed by the Assessee in its return of income. In its return of income, the Assessee also not disclosed its turnover. In fact in its return of income the Assessee declared the amount of Rs. 7,05,338/- as its business receipts and shown income of Rs. 1,93,000/- only. Therefore, considering the peculiar facts and circumstances and the income declared by the Assessee from commission earned, in our considered view justice would be met by directing the Assessing Officer to apply gross profit @ 3% instead of 8% on the total annual turnover of the Assessee, which would be justifiable and appropriate. Hence, the appeal filed by the Assessee stands allowed with the aforesaid terms.

7. As we have granted substantial relief to the Assessee and allowed the appeal on merits, hence not dwelling into the other grounds raised by the Assessee which claimed to be legal in nature.

8. In the result, appeal of the Assessee stands allowed partly.

Order pronounced in open court on 21.02.2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

Draft dictated	08.02.2023
Draft placed before author	09.02.2023
Approved Draft comes to the Sr. PS/PS	
Order signed and pronounced on	
File comes to P.S.	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk	
Date of dispatch of Order	
Date of uploading on the website	