

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 164/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Nagaraj Ganesh, Adoni [PAN No. ABHPG8091K]	Vs. Income Tax Officer, Ward-1, Adoni
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri R. Mohan Kumar, AR
राजस्व द्वारा/Revenue by: Shri A.G.V. Prasad, DR

सुनवाई की तारीख/Date of hearing: 02/05/2023
घोषणा की तारीख/Pronouncement on: 08/05/2023

आदेश / ORDER

Aggrieved by the order dated 24/01/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Ganesh Nagaraju ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee is an individual, he derives income from business in the name and style M/s. Sri Sree Shambhavi Traders at Adoni. For the assessment year 2017-18, he filed return of income on 24/10/2017 declaring an income of Rs. 4.36 lakhs. During the scrutiny learned Assessing Officer found that assessee had shown sales of Rs. 17,83,777/- on 08/11/2016. Assessee produced the bills and vouchers

supporting only Rs. 11,65,003/-. In respect of the balance, assessee explained that the sales of 08/11/2016 includes the sales of 10/11/2016. Learned Assessing Officer did not accept the same and brought the balance of Rs. 6,18,774/- to tax.

3. Learned Assessing Officer further found that the assessee debited an expenditure of Rs. 25,44,203/- towards lorry freights in books of accounts, but produced the expenditure vouchers supporting only Rs. 2,70,357/-. Learned Assessing Officer, therefore, disallowed 50% of such expenditure and brought to tax a sum of Rs. 12,72,102/-.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal and submitted that by oversight, he did not include Rs. 8 lakhs as unexplained cash as per his sworn statement dated 28/03/2017, took tax credit of Rs. 3,99,200/- and deposited Rs. 2 lakhs under PMGKY Scheme, 2016. Learned Assessing Officer failed to consider this aspect. In respect of the disallowance of the freight expenditure, assessee submitted that the net freight paid on purchase quantity roughly comes to Rs. 34/- per bag and such an expenditure is very reasonable and, therefore, no disallowance could be done in this matter.

5. Learned CIT(A) considers the submissions of the assessee. Learned CIT(A) commented that in respect of the amount of Rs. 8 lakhs offered under PMGKY Scheme, 2016, assessee did not file any evidence to prove that the discrepancies pointed out during the assessment proceedings were duly covered by the defects pointed out while opting for this scheme. According to the learned CIT(A), for this lapse, the assessee must fail. He accordingly confirmed the addition of Rs. 6,18,774/-.

6. In respect of 50% disallowance of the lorry freight charges, learned CIT(A) took a lenient view and since the assessee furnished the details of bags of foodgrains purchased from various locations within the State and outside the State, incurring freight and unloading charges, it would not be

reasonable to disallow 50% of the freight charges, but considering the probabilities of the case, 10% of disallowance would be reasonable. He accordingly directed the learned Assessing Officer to disallow only 10% of the lorry freight charges. Assessee is therefore, in appeal before this Tribunal.

7. Learned AR submitted that it is not the case of the Revenue that the assessee receiving any amount or deriving any income from any business other than M/s. Sri Sree Shambhavi Traders. Learned Assessing Officer did not advert to the contention of the assessee that under PMGKY Scheme, 2016, the assessee declared Rs. 8 lakhs and took the tax credit of Rs. 3,99,200/- or he deposited Rs. 2 lakhs under that scheme. Though the learned CIT(A) took cognizance of the said plea, recorded that the assessee did not file any evidence to prove that the discrepancies pointed out during the assessment proceedings are duly covered by the defects pointed out while opting for the said scheme. Learned AR submits that it is a matter of record.

8. Learned AR further submitted that there is no scope for disallowance of even 10% of the lorry freight charges because, the purchase of foodgrains by the assessee from various locations is not in dispute and, therefore, when such purchase involves the payment of lorry freight charges and the unloading charges, no question of any disallowance would arise.

9. Per contra, learned DR submitted that the show cause notice dated 19/12/2019 clearly refers to various amount totaling up to Rs. 33,76,539/- that assessee does not specify in respect of which, amount of Rs. 8 lakhs declared by the assessee under PMGKY Scheme, 2016 relates to. He, therefore, submits that the balance of Rs. 6 lakhs that is added is exclusive of Rs. 8 lakhs said to have been declared by the assessee under PMGKY Scheme, 2016. He further submitted that in the absence of any bills or vouchers, disallowance at 10% of the freight charges is reasonable.

10. In reply, the learned AR submits that the assessment order was passed subsequent to the notice dated 19/12/2019 after considering the explanation offered by the assessee and, therefore, does not open for the Revenue to say that the amount of Rs. 6.18 lakhs added after excluding Rs. 8 lakhs declared by the assessee under PMGKY Scheme, 2016. He further submits that it is only because the learned Assessing Officer accepted the explanation of the assessee in respect of the amounts said to have remained unexplained under notice dated 19/12/2019, there is no whisper of such amounts in the assessment order. According to the learned AR, the difference in the sales to the tune of Rs. 6.18 lakhs cannot be said to have been unexplained because, the assessee submitted that such amount relates to the sale on 10/11/2016. He further submitted that Rs. 34/- for bag towards lorry freight and unloading charges is quite reasonable.

11. I have considered the facts of the case in the light of the submissions made on either side. There is no denial of the fact that the assessee submitted explanation to notice dated 19/12/2019. It is only after considering the explanation of the assessee, the assessment order was passed on 24/12/2019. There is no whisper as to the amounts mentioned in notice dated 19/12/2019 in the assessment order. The additions made in the assessment order are in respect of specific aspects.

12. There is no denial of the fact that the assessee declared Rs. 8 lakhs under PMGKY Scheme, 2016. On consideration of the entire material before him, the learned Assessing Officer found that only a sum of Rs. 6.18 lakhs is the excess amount over the sales done on 08/11/2016 includes the amount of sales on 10/11/2016. Learned CIT(A) recorded that there is no evidence to show that this amount of Rs. 8 lakhs, that was declared under PMGKY Scheme, 2016 relates to the defects pointed out.

13. It is, therefore, clear that when once the assessee declared a sum of Rs. 8 lakhs under PMGKY Scheme, 2016 on 28/03/2017 and submitted before the learned CIT(A) that by oversight they did not include this

amount while filing the ITR, it is always open for the authorities to cause verification of these facts to reach a plausible conclusion. For not doing so, the assessee cannot be held responsible. Keeping in view the smallness of the amount involved on this aspect, I do not deem it just and proper to restore the issue to the file of the learned Assessing Officer for re-verification of the fact. Having regard to the circumstances of the case, I accept the contention of the assessee and allow this ground of appeal.

14. Coming to the disallowance of lorry freight charges, though the learned Assessing Officer disallowed 50%, learned CIT(A) restricted it to 10% only. It is not the case of the assessee that at any point of time they produced the relevant vouchers or bills. Even now also no such proposal has come. In these circumstances, I find it reasonable to disallow the expenses at 10%. I confirm the findings of the learned CIT(A).

15. In the result, appeal of assessee is allowed in part.

Order pronounced in the open court on this the 8th day of May, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 08/05/2023

TNMM

Copy forwarded to:

1. Nagaraj Ganesh, 18/209, L.B.Street, Adoni, Kurnool, Andhra Pradesh.
2. ITO, Ward-1, Adoni.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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