

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER**

ITA No.4806/Del/2019
Assessment Year: 2015-16

Arth Rural Connect Services Pvt. Ltd. H.No.39, Sapta Swahid Path Kamrup, Dispur, Guwahati Assam -781006 PAN No. AAACZ3402A	Vs	ITO Ward- 3 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Sachit Jolly, Advocate
Respondent by	Sh. Kanv Bali, Sr DR

Date of hearing:	24/05/2023
Date of Pronouncement:	24/05/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-32, New Delhi dated 29.03.2019 pertaining to A.Y.2015-16.

2. The grievance of the assessee read as under :-

1. That the leaned CIT Appeals has confirmed that Commission disallowance of Leaned AO. Commission has been disallowed taking the plea that it is on higher side as a percentage of revenue. However proper records regarding the calculation of Commission, proof for payment of commission were provided. Commission is paid based on agreement with State bank of India.
2. The Appellant was appointed as Banking Correspondent and entered in to an agreement with the Banks to provide various banking services on behalf of the bank through its agents known as Customer Service Point (CSP) or Bank Mitra. The CSP provides various banking services as per banks instructions.
3. The bank credits the commission earned by CSP in different services as per bank's prescribed rate in the appellant account and debit the CSP share of commission by crediting the individual CSP bank account. For the FY 2014-15 the appellant has booked the total commission expenses of Rs.1,52,73,845/- as per books of accounts which has been accrued and paid to various CSPs. The payment of the aforesaid Commission has been paid directly by the Banks by debiting the account of the Appellant.
4. The leaned AO disregarded the complete ledger account of the appellant wherein it is clearly mentioned, about the receipt of Commission and its payments to various CSPs by debiting the account of the Appellant and the entire transactions has been recorded in the books of Appellant.
5. The leaned AO disregarded the SBI Current Account of the appellant from where the amount is debited and credited in the individual CSP Account.
6. The disallowance made by the AO for an amount of Rs. 38,26,845/- is without any basis and is based on whims and fancies of the AO. The AO has disregarded the fact that the payment of commission made to various CSPs are based on the Agreement entered with the Banks for providing the services as Customer Service Point and the disbursement were made based on the agreement only.
7. The appellant craves leave to add, amend, vary, omit or substitute all or any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

3. Representatives of both the sides were heard at length. Case records carefully perused, and the relevant documentary evidences brought on record duly considered in the light of Rule 18 (6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee company is engaged in the business of banking correspondent (BC) and has entered into agreement with State Bank of India and some other banks for providing BC services. The assessee's only business is to provide various banking services in remote and unbanked area of North East region where the normal banking operation is merely impossible through its agents known Customer Services Point (CSP) or Bank Mitra.

5. For the year under consideration return of income declaring loss of Rs.507343/-was filed on 28.09.2015. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

6. During the course of the scrutiny assessment proceedings the AO analysed the following statement of Profit and Loss account for the year ended 31.03.2015 : -

Arth Rural Connect Services Private Limited
Statement of Profit and Loss for the year ended 31st March 2015

in ₹

Particulars	Note	March 31, 2015	March 31, 2014
L INCOME			
(1) REVENUE FROM OPERATION			
(a) Project Receipts	2.12	21,396,263.29	12,328,400.94
(b) Sales of Services (Software and Products)	2.13		
		21,396,263.29	12,328,400.94
(2) OTHER INCOME			
(a) Bank Interest	2.14	89,557.00	241,026.00
(b) Miscellaneous	2.15	45,406.00	11,344.74
		134,963.00	252,370.74
TOTAL REVENUE (1 + 2)		21,531,226.29	12,580,771.68
(2) EXPENSES			
(a) Project Expenses	2.16	16,194,595.00	7,790,991.12
(b) Employess Remuneration and Benefits	2.17	4,249,981.00	2,552,372.00
(c) Finance Cost	2.18	30,154.14	36,393.36
(d) Communication Expenses	2.19	42,415.00	37,464.00
(e) Travelling Expenses	2.20	372,678.00	145,834.00
(f) Administrative and Other Expenses	2.21	1,056,070.33	655,707.00
(h) Depreciation	2.6	89,872.78	80,970.00
TOTAL EXPENSES		22,035,766.25	11,299,731.48
PROFIT BEFORE TAX		(504,539.96)	1,281,040.20
(3) TAX EXPENSES			
(a) Current Tax	2.22	-	421,000.00
(b) Deferred Tax	2.22	(20,095.00)	(19,930.00)
		(20,095.00)	401,070.00
PROFIT FOR THE PERIOD		(484,444.96)	879,970.20
EARNINGS PER EQUITY SHARE			
Equity Shares of Par value ` 10/- each			
Basic		(48.44)	88.00
Diluted			
Number of Shares used in Computing Earnings Per Share			
Basic		10,000	10,000
Diluted			

SIGNIFICANT ACCOUNTING POLICES AND NOTES ON ACCOUNTS 1 & 2

As per our report attached

For K.D. Vyas & Co.
Chartered Accountants
FRN NO 11653W

K. D. Vyas
Proprietor
M.No. 14613

Place:- Mumbai
Date:- 20th August 2015



For and on behalf of the Board

Veerendra Sharma
Director

A. K. Tiwari
Director

7. The AO observed that during the year under consideration though the project receipts increased from 1.23 crores to 2.13 crores but the profit before tax has come out from 12.81 lacs to a loss of Rs. 5.04 lacs. The AO further observed that the

commission payment increased to Rs.1.52 crores from 65.95 lacs in the immediately preceding financial year.

8. The assessee was asked to explain the nature of commission/ services rendered with reasons for sharp increase in commission for 53.50 percent to 71.38 percent in comparison to last year. The assessee was also asked to explain why the whole commission of Rs.1.52 crores be not disallowed.

9. Assessee filed a detailed reply which did not find any favour with the AO. The AO was of the opinion that the assessee has neither filed the copy of account of commission paid nor has filed any copy of agreement with the CSP on the basis of which the commission is paid. The AO further observed that the assessee has not filed any copy of agreement with the banks which was applicable for the year under consideration.

10. On finding no satisfactory documentary evidences the AO taking a leaf out of the percentage of commission paid in the immediately preceding financial year allowed the claim only to that extent and made addition of Rs.38,26,845/- which was confirmed by the CIT(A).

11. Before us the Counsel has filed additional documents in the form of business correspondence agreement business with SBI, business correspondence/ customer services point agreements, enrolment letter of CSP. The Counsel vehemently argued that the

entire payment is documented and the basis of payment have been duly explained in the agreements. The Counsel drew our attention to the relevant clauses of the agreement. It is the say of the Counsel that the assessee is only pass through and the payment of commission is determined by the lead bank i.e. SBI under the control of RBI. The Counsel further stated that the agents / sub agents have to go places where cost of reaching is very high and, therefore, the payment of commission increased during the year under consideration.

12. Per contra the DR strongly supported the findings of the AO and stated that the documents now referred by the Counsel were never examined by the AO.

13. We have given a thoughtful consideration to the rival submissions. A perusal of the agreement shows that the payment of commission is contractual liability with SBI and with the customer service provider. It appears that these agreements have not been examined in detail by the AO, therefore, it becomes imperative to examine these agreements at the assessment stage. Therefore, in the interest of justice we restore this issue to the files of the AO. The assessee is directed to file all the relevant agreements and the AO is directed to examine the same and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

14. The AO has mentioned that the payment of commission is excessive but has not brought on record any cogent material evidence to demonstrate how the payment of commission is excessive. Therefore, we direct the AO to bring some cogent material evidence on record, may be comparables to show that the payment of commission is excessive.

15. With the above directions the appeal is treated as allowed for statistical purpose.

16. Decision announced in the open court on 24.05.2023.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .05.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi