

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

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| ITA No.245/Hyd/2023 | | |
| Assessment Year: 2017-18 | | |
| Shri Konatham Kotireddy Warangal PAN:ATUPK6883E | Vs. | Income Tax Officer Ward-1 Warangal |
| (Appellant) PAN: | | (Respondent) |
| Assessee by: | Shri Vamseedhar, CA | |
| Revenue by: | Shri KPRR Murthy, CIT(DR) | |
| Date of hearing: | 06/06/2023 | |
| Date of pronouncement: | 07/06/2023 | |

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 7/3/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The assessee has raised the following grounds of appeal:

“1. The learned CIT (A) erred in law and on facts in confirming the penalty amounting to Rs.1,11,065/- u/s 271 B of the I.T. Act, 1961.

2. The learned CIT (A) is not justified in dismissing the appeal without giving a reasonable opportunity to the appellant.

3. The learned CIT (A) erred in ignoring the impeccable documentary evidence filed a letter from the Principal

Dealer viz. M/s. Anika Bajaj, wherein they have clearly stated the appellant is our sub dealer working on commission and incentive basis only.

4.The penalty u/s 271B of the I.T. Act, 1961 levied on the turnover, which belongs to the Principal Dealer viz., M/s. Anika Bajaj, whereas appellant does not have the turnover which is exceeding the threshold limit as per the provisions of section 44AB of the I.T. Act, 1961. But the turnover of the main dealer is considered in the hands of the appellant assessee and levied penalty u/s 271B of the Act is against the law.

5. The learned CIT (A) as well as the Assessing Officer erred in law and on facts in initiating the provisions of section 271B without considering the CBDT Circular No.452 dated 17th March, 1986 regarding applicability of section 44AB of the I.T. Act, 1961, in the cases of commission agents, araftias, etc., which is against the principles of natural justice and penalty order needs to be quashed.

6. Any other ground or grounds of appeal that may be urged at the time of hearing”.

3. Facts of the case, in brief, are that the assessee is an individual and is a sole proprietor running agency business in the name of M/s. Susma Motors at Thorrur and M/s. Capital Motors at Mahabubabad through 2 sub-outlets on behalf of M/s. Bajaj Anika, Warangal who are dealers of Hero Vehicles and the assessee running aforesaid two outlets on behalf of M/s. Bajaj Anika i.e. booking vehicles on behalf of the main dealer and collecting down payments from the prospective buyers and once the vehicle is delivered to the ultimate customer, then only he will be remitting the total collected amount from the prospective buyer to the main dealer i.e. M/s. Anika Bajaj. The assessee is also carrying on trading activity i.e. purchase and sale of spares and accessories of Hero Honda Vehicles. The return of income for the A.Y 2017-18 was filed on 19.12.2017 declaring total income of Rs.6,04,030/-.

4. The learned Counsel for the assessee, at the outset, submitted that during the year under consideration, the total bank deposit in the assessee's a/c was Rs.2,22,12,776/- and out of the said amount Rs.7,97,500/- were deposited by the assessee during the demonetization period. It was the submission of the assessee that the assessee was merely working as an agent of the two-wheeler outlets and making booking for M/s. Anika Bajaj. It was submitted that the bookings made by the assessee for the Principal Outlet.

5. During the course of assessment proceedings, the Assessing Officer found that the assessee had total credits of Rs.2,22,12,776/- in assessee's bank accounts which was not disclosed in the return of income. The learned AR submitted that the assessee's total turnover during the year under consideration including the commission income was Rs.57,90,124/-. It was his submission that as against the total turnover of Rs.57,90,124/-, the threshold limit for audit of the a/c was Rs.1.00 crore as per CBDT Circular No.452 dated 17th March, 1986 to buttress his case para materia similar to Kuchha Arahita referred in the above said circular.

6. The learned AR submitted the following written submissions:

"The appellant, an individual, filed his return of income for the A.Y 2017-18 on 19.12.2017 declaring total income of Rs.6,04,030/-. During the course of assessment proceedings, the Assessing Officer found that the appellant had total credits of Rs.2,22,12,776/-(after including the cash deposits of Rs.7,97,500/- during demonetization period) in all the appellant's bank accounts (7 no's). According to the learned Assessing Officer, the said credits in all the appellant's Bank Accounts (7 No's) represents the business receipts of the appellant which was not disclosed in the Return of Income and estimated income at @ 8% on Rs.2,14,15,276/- which works out to Rs.17,13,220/- and treating the cash deposits into the bank accounts of the appellant during the

demonetization period amounting to Rs.7,97,500/- as unexplained money u/s.69A of the Income Tax Act, 1961 and made unwarranted additions to the returned income. Subsequently, the appellant was show-caused as to why penalty u/s.271B should not be levied on 09.12.2019. In response to the show cause notice, it was agent for 2 contended that the one M/s. Anika Bajaj, 2 appellant is only a commission Warangal who are dealers of Bajaj Vehicles and Collecting amounts from the prospective purchaser of 2-Wheelers i.e., Doja) Vehicles as per instruction of the said Principal/Main Dealer i.e., M/s. Bajaj Anika, Warangal through his two outlets viz, Capital Marketing. Thorrur and Sushma Motors. Mahabubabad and for the purpose of computing the turnover, annual commission alone has to be reckoned as the gross receipts. Rejecting the above contentions, the learned Assessing Officer levied penalty of Rs.1,11,065/- (0.5% of Rs.2,22,12,776/-) u/s.271B of the Act vide order dated 21.12.2021 for failure of appellant to get accounts audited as stipulated under the provisions of section 44AB of Act and the claims made by the appellant were not considered by the learned CIT(A) in the appellate proceedings.

2. Appellant submits that, the facts of his case are similar to Kuchha Arahtia and, therefore, even the turnover does not include the sales effected on behalf of the Principals viz., M/s. Anika Bajaj, Warangal and only the gross commission, Receipts as Authorized Service Dealer (ASD) for Bajaj Auto Limited dealing especially in providing after sales service, regular maintenance and servicing and repair services of Bajaj Vehicles viz., 2 Wheeler Vehicles alone are to be considered for the purpose of Section 44AB. It was also submitted that the appellant had not transferred any 2-Wheelers to someone else, he is only an agent acted on behalf of M/s Anika Bajaj, Warangal i.e., principal and invoices for the said 2-Wheeler's sales are raised by the principal only and not by the appellant. All these submissions were ignored by the learned Assessing Officer.

3 Accordingly, it is to submit before the Hon'ble Appellate Tribunal that as per the CBDT Circular No.452 Dated 17th March, 1986 regarding applicability of section 44AB of the Income Tax Act, 1961, the provision of section 44AB of the Income Tax Act, are not applicable to the Kuchha Arahtia. Alternatively, the appellant also contended before the learned AO and as well as before the learned CIT(A) that it was prevented by sufficient cause in not getting its accounts audited under section 44AB of the Act.

4. As an alternative submission, the appellant humbly submits that there are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers 'Kuchha Arahtias and Pucca Arahtias dealing in different commodities in different parts of the country. While relying on the CBDT Circular No.452 dt.17th March, 1986, the appellant submits that as per the said Circular, so far as Kuchha Arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and all the gross income has to be considered for the purpose of section 44AB. Appellant accordingly submits that in the appellant's case the provisions of section 44AB are not attracted. Reliance was also placed on the decision of the Hon'ble Appellate Tribunal, Amritsar Bench in the case of

ITO vs Bindra Ban Bansi Lal (2001) 78 ITD 228(Asr), The same was ignored by the learned Assessing Officer and the learned CIT(A), which is incorrect and bad in law.

5. It is further submitted that, the CIT(A) was not justified, in the foregoing circumstances, to ignore the facts placed before him and without giving reasonable opportunity to submit the further information, if any, and dismiss the appeal on irrelevant consideration.

6. Coming to the facts, it is humbly submitted that the appellant is purely an agent acting on behalf of his principal and appellant has received an amount of Rs.1,92,02,715/- from various prospective buyers, who made down payments during the year 2016-17 and the said collected amounts were deposited into his 6 bank accounts during the year under consideration and out of which an amount of Rs.1,88,66,600/- were transferred to his principal viz., M/s. Anika Bajaj through 5 bank accounts of the appellant during the year 2016-17. From this it is clearly evident that, the said amounts were not pertaining to the appellant.

7. In the circumstances, appellant pleads that he was denied justice by ignoring the facts placed before the learned AO and as well as by the learned CIT(A). Therefore, appellant urges before the Hon'ble Appellate Tribunal to consider all the submissions made and do the needful justice."

7. Per contra, the learned DR submitted that while making the estimation, the entire amount deposited in the account was considered to be the income of the assessee and therefore, the assessee was required to get its account audited and in failure thereof, the Assessing Officer was right in taking action u/s 271B of the Act and the learned CIT (A) to confirm the penalty for failure to get the a/c audited as per the provisions of section 271B of the I.T. Act.

8. We have heard the rival arguments made by both the sides and perused available material on record. The Assessing Officer in the assessment order had reproduced the reply of the assessee at page 2 of its order. The Assessing Officer has merely reiterated the provisions of section 271B of the Act and had mentioned that the total sales/turnover/gross receipts of the assessee during the period under consideration was worked out to

Rs.2,22,12,776/- and therefore, the Assessing Officer had imposed penalty for Rs.1,11,065/-. The learned CIT (A), despite the reliance by the assessee, on the Board's Circular and the assessee's contention that the assessee was merely working as a commission agent for M/s. Anika Bajaj and have made bookings for the principal outlet, had rejected the contention of the assessee that the assessee was merely working under the directions of the principal M/s. Anika Bajaj for booking of the scooters and for those services, the assessee was receiving the commission. The learned CIT (A) after reiterating the submission of the assessee had rejected the claim of the assessee on the pretext that the assessee was not able to submit any documentary evidence in support of its claim. In our view it is for the Assessing Officer or the learned CIT (A) to make adequate inquiries from the Principal Outlet M/s. Anika Bajaj to find out whether the assessee was working as an agent for it or not. Once the assessee had categorically stated that the assessee was working for the main outlet on commission, then the consideration received for sale cannot be considered as turnover of the assessee or receipt of the assessment. As a matter of fact, the assessee has filed supporting document like form 26AS (which shows assessee was regularly receiving commission payment from the Principal Outlet at page 8 of the Paper Book) and Letter of appointment issued by M/s. Anika Bajaj vide letter dated 1.4.2016 appointing assessee as commission agent (at page 68 of the Paper book clearly shows that the assessee was carrying its agency business for and on behalf of M/s. Anika Bajaj). In the light of the above said evidence we have no doubt that the assessee was working as a commission agent for the principal outlet M/s. Anika Bajaj. Since the gross turnover for the period under consideration was less than Rs.1.00 crore, hence the accounts are not required to be audited as per

section 44AB of the Act. Hence penalty imposed by the lower authorities was without any basis. Accordingly, we have no other option, but to delete the same. In the light of the above the grounds raised by the assessee is allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 7th June, 2023.

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| Sd/- (R.K. PANDA) ACCOUNTANT MEMBER | Sd/- (LALIET KUMAR) JUDICIAL MEMBER |
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Hyderabad, dated 7th June, 2023.

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Shri Konathan Kotireddy, No.3-110 Beerapa nagar, Thorrur, Warangal 506163 |
| 2 | ITO Ward-1 Aayakar Bhavan, 3 rd Floor, Mayuri Complex, Opp: TSNPDCL Byhawan, Nakkalagutta, Warangal 506001 |
| 3 | DR, ITAT Hyderabad Benches |
| 4 | Guard File |

By Order