

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA Nos.296 and 297/Hyd/2023		
Assessment Year: 2018-19		
Santok Das, Hyderabad. PAN : BPAD9797K. (Appellant)	Vs.	Income Tax Officer, Mahaboob Nagar. (Respondent)
Assessee by:	Sri K. Sai Prasad.	
Revenue by:	Sri Kumar Adithya	
Date of hearing:	12/07/2023	
Date of pronouncement:	24/07/2023	

ORDER

PER LALIET KUMAR :

These appeals of the assessee for A.Y. 2018-19 arise from the separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.27.03.2023 invoking proceedings under section 143(3) and 270 of the Income Tax Act, 1961 (in short, “the Act”), respectively.

2. The grounds raised by the assessee in ITA No.296/Hyd/2023 read as under :

“1) The ld.CIT(A), NFAC in the facts and circumstances of the case is not justified in dismissing the appeal without properly appreciating the information filed.

2) The ld.CIT(A), NFAC erred in not properly appreciating the fact that the appellant’s income is much less than 1% of the commission and the same was subjected to TDS as reflected in 26AS.

3) The ld.CIT(A), NFAC is not justified in confirming the estimate of net income at the rate of 8% on the total deposits, whereas the appellant got gross commission of much less than 1% and he had to incur expenses out of this commission.

4) The ld.CIT(A), NFAC is not justified in not considering the correctness of the figure of deposits at Rs.12,59,10,300/- especially when it can be seen from the assessment order that the amount of Rs.4,60,61,600/- being deposits in Andhra Bank, was taken twice.”

3. The grounds raised by the assessee in ITA No.297/Hyd/2023 read as under :

“1) The ld.CIT(A), NFAC in the facts and circumstances of the case is not justified in dismissing the appeal without properly appreciating the submissions made.

2) The ld.CIT(A), NFAC, in the facts and circumstances of the case is not justified in confirming the levy of penalty of Rs.69,33,100/-.

3) The ld.CIT(A), NFAC is not justified in confirming the estimate of net income at the rate of 8% on the total deposits, whereas the appellant got gross commission of much less than 1% and he had to incur expenses out of this commission.”

4. Before us, both the parties submitted that the issues raised in both appeals are identical. In view of the aforesaid submission, we, for the sake of convenience proceed to dispose of both the appeals by a consolidated order, however, refer to the facts in ITA No.296/Hyd/2023.

5. Facts of the case, in brief, are that the assessee had filed a return of income for A.Y.2018-19 on 29.08.2018. The case was selected for limited scrutiny and accordingly, notice u/s 143(2) of the Act was issued to the assessee on 28.09.2019. In response, assessee submitted reply without any supporting documents. During the course of assessment proceedings, Assessing Officer found that assessee had made a cash deposit of Rs.12,59,10,300/- in his account on various dates. However, the assessee had disclosed only Rs.3,58,985/- as gross receipts in his ITR for A.Y. 2018-19. Hence, the assessee was called to submit information as per notice u/s 142(1) dt.13.12.2019 including a reconciliation statement between turnover disclosed in ITR and payments received as per 26AS etc. As the assessee failed to explain the said cash deposits with supporting documents, as no other go, Assessing Officer had completed the assessment interalia making the addition of Rs.1,00,72,824/- (being 8% of Rs.12,59,10,300/-) and also initiated penalty proceedings levying penalty at Rs.69,33,100/- due to under reporting and misreporting of income.

6. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal which was subsequently migrated to the CIT(A), NFAC, Delhi, who in turn dismissed the appeal of assessee in para 8 of his order it was held as under :

“8. The appellant stated that he is doing money transfer business on behalf of customers and he receives commission from Hermes, clearly reflected in 26AS. However, he could not substantiate with supporting documentary evidence, the details of ledger' account with parties, cash book, the magnitude of transactions, the reconciliation between turnover disclosed in ITR and payments received as per 26AS, as normally money in such cases is deposited in a separate pool account. The appellant could not furnish the same. Further, notices u/s 133(6) to M/s Hermes I Tickets Pvt. Ltd. and M/s Vodafone M-pesa Limited evoked no response. Even now, the appellant has furnished copy of discontinuation email from m-pesa but could not provide registration certificate as BCA for the previous year and also any such agreement with M/s Hermes for the previous year and also could not furnish the confirmation of business done and commission received from M/s Hermes, which could correlate with the huge cash deposits in the personal current accounts at Andhra Bank and deposits with other bank savings/ current accounts. In view of this, it is held that the AO was reasonable in arriving at income @ 8% of the total receipts. Hence, the addition of Rs.1,00,72,824/- has to be upheld. In the result, the appeal is dismissed.”

7. Feeling aggrieved with the order of Id.CIT(A), NFAC, Delhi, assessee is now in appeal before us.

8. Before us, Id.AR submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and that assessee failed to appear due to unavoidable circumstances. The Ld.AR had submitted an application for admission of additional evidence wherein it was submitted as under :

“In the above case, before the lower authorities the appellant claimed that he is acting as a collection agent for money transfers and that deposits are collections from customers duly transferred to the authorized principal. He claimed that he earned commission of less than 1%. The 26AS revealed the gross commission and TDS thereon. Income was admitted accordingly.

Though the appellant handed over all the details of his tax consultants, they were not be filed before the lower authorities for the reasons not known to him. Hence, his income was estimated @ 8% by Assessing Officer and confirmed by the First Appellate Authority.

Further the credits in the Andhra Bank were taken twice by the lower authorities.

To substantiate his claims the appellant files before the Hon’ble Income Tax Appellate Tribunal relevant data in the paper book as additional evidence.”

8.1. The particulars of the documents filed as additional evidence are as follows :

Sl.No.	Particulars	Date
1	Copy of the ITR for A.Y. 2018-19 with annexures filed before Assessing Officer.	-
2	Copy of the 26AS	-
3	Copy of the Agency Certificate issued by Hermes and Agency registration	13.06.2023
4	Copy of the business enrollment form with Vodaphone	06.08.2016
5	Details of Commission offered by Hermes to Stockist	21.05.2023
6	Details of commission offered by Hermes to retailers	-
7	Summary of deposits to Hermes and MPESA from assessee Banks	-
8	Details of transfer from Hermes to Retailers	April 2017 to March, 2018
9	E Wallet A/c with Hermes for April 2017	03.04.2017
10	Copy of the Andhra Bank current account statement from 01.04.2017 to 31.03.2017	18.01.2022
11	Copy of the SBI A/c statement from 01.04.2017 to 04.04.2017	10.01.2022
12	Copy of the current A/c with Yes Bank – Dealers Collections A/c	01.04.2017 to 31.03.2018

8.2 Referring to Para 4 of the assessment order, ld. AR submitted that amount of Rs.4,60,61,600/- has been added twice as a cash deposit in Andhra Bank. On the basis of the above application, it was submitted that the matter may kindly be remitted back to the lower authorities for deciding the matter afresh in the light of the additional evidence now filed by the assessee.

9. On the other hand, the ld.DR has raised an objection for remanding the matter back to the file of lower authorities. The ld.DR had raised an objection for admitting the additional evidence and he relied upon Rule 29 of ITAT Rules, 1963 which are to the following effect :

“29. Production of additional evidence before the Tribunal.-

The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them, or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.”

9.1. It was submitted that the assessee failed to fulfill the requirements as mentioned in Rule 29 of ITAT Rules, 1963, and therefore, the additional evidence filed by the assessee should not be accepted.

10. We have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the order of Id.CIT(A), we found that Id.CIT(A) had dismissed the appeal of assessee upholding the action of Assessing Officer in estimating the income @ 8% of gross receipts. In the present case, it is an admitted fact that assessee had shown gross turnover as gross receipts in his return of income only at Rs.3,58,985/- whereas the total cash deposits were Rs.12,59,10,300/- and also failed to adduce cogent evidence and further failed to prove the cash deposits in five different bank accounts except contending that he was doing money transfer business on behalf of customers and receives a commission.

11. We further find that in paragraph 6 of his order, Id.CIT(A) clearly mentioned that assessee had not submitted relevant details and supporting evidence like copies of the business registration certificate, cash book, reconciliation statement between turnover disclosed in ITR and payment received as per 26AS etc. As the Id.CIT(A) passed orders based on the material available on record only, in view of the additional documents filed by the assessee before us and in view of the request of assessee that the matter may kindly be remitted back to the lower authorities for deciding the matter afresh in the light of the additional evidence now filed by the assessee, we feel that ends of justice would be met if the matter is remanded back to the file of Id.CIT(A) with a direction to consider the additional documents placed on record before us after affording

sufficient opportunities of hearing to the assessee in accordance with the law.

12. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Id.CIT(A) shall consider the additional evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents/evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. The assessee is directed to appear before the Id.CIT(A) and cooperate in the early hearing of the appeal. Thus, the grounds of the assessee are allowed for statistical purposes.

13. In the result, the appeal of the assessee in ITA No.296/Hyd/2023 is allowed for statistical purposes.

14. As far as the other appeal i.e., ITA No.297/Hyd/2023 is concerned, in view of the submission of both the parties that the issues raised in both the appeals are identical, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.296/Hyd/2017 and for similar reasons, allow the other appeal for statistical purposes.

15. In the result, the appeal of assessee in ITA No.297/Hyd/2023 is allowed for statistical purposes.

16. To sum up, both the appeals of assessee are allowed for statistical purposes. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 24th July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 24th July, 2023.
TYNM/SPS

Copy to:

S.No	Addresses
1	Santok Das C/o.Katrapati & Associates, 1-1-298/2/B/3, 1 st Floor, Ashok Nagar, Street No.1, Hyderabad – 500 020.
2	Income Tax Officer, Ward – 1, Mahaboob Nagar.
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order