

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 2489/Kol/2019
Assessment Year: 2016-17

Harpreet Singh Brar (PAN: AUOPB 6229 Q)	Vs.	ITO, Ward-46(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	03.08.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri Sanjay Paul, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-14, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 17.10.2019 for the AY 2016-17.

2. The only issue raised by the assessee is against the confirmation of addition of Rs. 1,18,14,615/- by the Ld. CIT(A) which was added by AO on account of mismatch between AIR information and ITR of the assessee qua TDS deducted.

3. Facts in brief are that the assessee filed return of income on 28.03.2017 declaring total income of Rs. 4,20,090/- which was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the assessee did not appear before the AO despite several opportunities allowed resulting into the AO proceeding to frame the assessment ex-parte u/s 144 of the Act. In the assessment order , the AO made addition in respect of

difference in contractual receipts between Form 26AS and the receipts shown in the ITR. The AO noted that the TDS was deducted u/s 194C of the Act @ 10% on gross contractual amount of Rs. 1,40,71,963/- whereas the assessee has shown only @ 5% of the said gross receipt which comes to Rs. 7,04,998/- in the return of income on the ground that the assessee commission was only 5% of the gross contract amount and the remaining amount was relating to the truck operators. The payments were also made directly by the contractee to the transport/truck operators whereas, the assessee claimed full credit of TDS of Rs. 1,40,731/- on the gross contract.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“3.3. I have gone through the submission of the appellant and perused the relevant records. The assessment order was passed u/s 144 of the IT Act, 1961 as the appellant had not cooperated during assessment proceedings. The appellant had during appeal proceedings, submitted that he has only received commission of 5% from M/s Serendipity Infolabs Pvt. Ltd. The company, had made payments directly to the owner of the vehicles which were arranged by him. He, however, could not explain why the entire payment has been credited to him and TDS deducted accordingly. The appellant could not submit copy of agreement with M/s Serendipity Infolabs Pvt. Ltd. to substantiate his arguments that he was only entitled to commission and that the company made payment directly to the owner of the vehicles. He could also not explain why he has claimed entire TDS credit on total payments in his ITR when he was entitled only to commission of 5% . The appellant in this regard could also not provide a written clarification from M/s Serendipity Infolabs Pvt. Ltd. to substantiate his claims. Therefore, after considering the facts of the case, I see no reason to interfere with the order of the AO. The addition of Rs. 1,18,14,615/- is confirmed. This ground of appeal fails and is therefore not allowed.”

5. After hearing the rival contentions and perusing the material on record, we note that during the year the gross contractual freight/hire charges were Rs. 1,40,71,963/- on which TDS @10% was deducted u/s 194C of the Act amounting to Rs. 1,40,717/- . We note that the assessee is in the business of engaging/hiring the trucks from the market and thus arranging the transport services to M/s Sarendipity Infolabs Pvt. Ltd. and charged commission @ 5% on the gross hire charges. The mode of payment is worked out in such a manner that the payment were made directly by the Sarendipity Infolabs Pvt. Ltd. to the transporters/truck operators and only 5% commission is paid to the assessee. Thus this is undisputed that the assessee is receiving only 5% of the total contractual hire charges. We have examined the bank statement of the assessee

and note that the assessee has only received commission on the gross hire charges whereas the balance payments were directly remitted to the transporters. In our opinion, real income in the hands of the assessee has to be taxed and not the notional income which the assessee has neither received nor belonged to the assessee. This is not the revenue's case that the truck operators have not offered income to tax or the assessee has received gross amount of hire charges. The authorities below have only relied on the data as per Form 26AS and what is shown by the assessee in the ITR. Under the circumstances we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs. 1,18,14,615/-.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 21st August, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 21st August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Harpreet Singh Brar, 1/3/1, P. K. Roychoudhury Lane, Shibpur, Howrah-711103.
2. Respondent-ITO, Ward-46(2), Kolkata
3. Ld. CIT(A)- 14, Kolkata
4. Ld. PCIT-
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata