

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 3525/MUM/2019 (A.Y: 2014-15)

Ajay Prakash Nomad Travels, Turning Point 2 nd Floor, JP Road, Andheri (W) Mumbai – 400058 PAN: AAIPP6871G	v.	Income Tax Officer – 24(1)(1) Ward (1)(1) 7 th Floor, Room No. 702 Piramal chambers Lower Parel, Mumbai - 400012
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Malav P. Sheth
Department Represented by	:	Ms. Kavita Kaushik
Date of Conclusion of Hearing	:	15.06.2023
Date of Pronouncement	:	23.08.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by assessee against order of Learned Commissioner of Income Tax (Appeals)-36, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.03.2019 for the A.Y. 2014-15.

2. Brief facts of the case are, assessee filed his return of income on 31.07.2014 declaring total income of ₹.10,26,200/-. The return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response Authorised Representative of the assessee attended and submitted the relevant information as called for.

3. During this assessment year, assessee has received income from Salary, House property, Business and income from Other Source. The Assessing Officer observed that the case of the assessee was selected for scrutiny for the reason Higher turnover reported in the Service Tax return as compared to ITR. The assessee was asked to submit the details of income and explain the difference in the Service Tax and Income Tax return. From the submissions of the assessee, Assessing Officer observed that the assessee is a ticketing agent, tour operator and a travel agent. However, from the computation of income, it was observed that the assessee has shown gross receipts of ₹.94,25,769/- and against this had offered income from business under presumptive taxation and offered the same at 8% of the gross receipt i.e., ₹.7,54,061/-.

4. The Assessing Officer observed that assessee is a travel agent and earns commission income, therefore in view of the provisions of clause (i) and (ii) of sub section (6) of Section 44AD of the Act, assessee is not eligible for benefit of computing of income on the basis of presumptive basis. Accordingly, assessee was intimated and asked to furnish the financials and other relevant documentary evidences.

5. In response, assessee submitted Profit and Loss Account, wherein he has submitted the details of gross receipts and claimed various expenses and determined the net profit of ₹.11,84,565/-. The Assessing Officer observed that the gross receipts consist the following: -

Service	Amount
Ticketing	30,01,969
Travel documentation	19,30,539
Tours	30,23,259
Passport, visa	5,85,008
Mark up	6,12,929
Voiding and cancelation	1,57,716
Cab operator	5,220
Miscellaneous income	1,09,129
Total	94,25,769

6. Assessing Officer observed that the income earned by the assessee consists of commission as well as non-commission income. Based on the above observation the Assessing Officer was of the opinion that assessee

is not eligible to claim benefit u/s. 44AD and assessee should have maintained two Books of Accounts for commission as well as non-commission business. Since, assessee has not done so and instead prepared a combined statement of profit and loss account, whereby, the expenses have been claimed irrespective of the type of receipt. Accordingly, assessee was show-caused as to why the books of accounts should not be rejected as the same not to be rejected. In response, assessee submitted as under: -

"We refer to our last hearing of the case wherein you have asked to submit our response to your question as to why books of account should not be rejected as we have not maintained separate books of account for commission activity and non commission activity.

We beg to submit that the Income Tax Act does not require maintenance of separate books of account. Section 44AD is silent on the matter. We have, over the course of several decades of application of just and fair principles, observed that in many situations. carry on multiple activities/businesses, some of which enjoy a tax benefit and some don't. In all such cases, the assessee's maintain one common books of accctant and from these common books of account, the profit attributable to multiple activities/businesses are determined.

We provide here several citations to support our submission in this regard that the maintenance of separate books of account when there are multiple activities/business carried on is not required. The expenses can be apportioned or allocated on some logical, rational and scientific basis.

In support of the claim, assessee relied on the following case laws:

- (i) Income Tax Appellate Tribunal (Delhi) in the case of Zeon life Sciences Vs. Department of Income Tax on march 27,2015*

(ii) *Income Tax Appellate Tribunal (Bangalore) in the case of IBM India Private Limited Vs. Commissioner of Income Tax on June 28, 2013*

(iii) *Supreme Court in the case of Commissioner of Income Tax Vs. Bongaigaon Refinery and Petrochemical Lite*

7. After considering the submissions of the assessee, Assessing Officer rejected the books of account and proceeded to re-cast the Profit and Loss Account in respect of commission and non-commission receipts and determined the income from business at ₹.16,20,449/-

8. Aggrieved with the above order, assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions. After considering the submissions of the assessee Ld.CIT(A) sustained the additions made by the Assessing Officer and dismissed the grounds raised by the assessee.

9. Aggrieved with the above order, assessee is in appeal before us. Initially assessee filed grounds of appeal, subsequently filed amended grounds of appeal which are reproduced below: -

"1. Non-maintenance of separate books of books:

On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the entire activity of the tour operating business and ticketing business are operated through a common bank account and some common overheads, thereby it is

not possible to maintain separate set of books for the said segments of the business:

2. Applying the provisions of section 44AD on the entire business.

On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the provisions of section 44AD would apply to the entire business of the appellant as the predominant activity consists of non-commission / non-agency related activities. The learned CIT(A) further erred in applying the exception of section 44AD(6)(i) by alienating the commission income related activity from the business of the appellant

3. Direct expenses considered as common expenses.

Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the direct expenses amounting to Rs 28.10,906/- relating to the ticketing business must not be considered as common expenses and thereby further erred in allocating the said expenses in the ratio of 1.84% instead of allowing them in entirety while computing net profit from commission related ticketing business.

The appellant craves leave to add to, amend or alter, the foregoing ground of appeal."

10. At the time of hearing, Ld. AR of the assessee submitted that assessee is tour operator and he brought to our notice CDBT Validation Rules for A.Y. 2022-2023 and he brought to our notice Page No. J8 which is the list of codes not eligible for section 44AD and the code for "General Commission Agent" is 9005. Further, he brought to our notice Page No.J11 to J16 and brought to our notice that the reference of code 9005 reference to general commission agents, commodity brokers and auctioneers. He submitted that the relevant code for the transport and

logistic services holding licenses of travel agencies and tour operators of 11001 and submitted that this code is not listed in the list of codes not eligible for 44AD at Page No. J8. Therefore, he submitted that the assessee is eligible to claim the benefit u/s. 44AD on the presumption basis. Accordingly, he submitted that the view of the Assessing Officer is not proper and assessee is falling only under transport operator category and not falling under commission agency. Further, he submitted that assessee is earning various incomes by operating as tour operator and all the receipts are interconnected with the agency. In this regard he relied on the decision of the Hon'ble Supreme Court in the case of Setabganj Sugar Mills Ltd. v. CIT [1961] 41 ITR 272 (SC) to submit interconnect and inter-related business forms of the same business.

11. On the other hand, Ld. DR relied on the orders passed by the lower authorities.

12. Considered the rival submissions and material placed on record, we observe that assessee is a tour operator and earns the major income consists of commission from ticketing, income from tour and other non-ticketing revenue. Assessee treated all three types of income as one business income and claimed the combined expenditure as business

expenditure and declared the profit by adopting presumptive tax u/s.44AD of the Act. Assessing Officer rejected the presumption basis of declaring the income and he determined the income earned by the assessee from commission and non-commission business. However, before us, Ld. AR of the assessee brought to our notice the validation rules issued by the CBDT for the purpose of e-filing and as per the list of codes listed in the instruction to Form ITR-6 the case of the assessee falls under "Travel Agencies and Tour Operator [code 11001]" not under the general category of code 9005 for General Commission Agents. Therefore, the category of tour operators is eligible to declare the income u/s. 44AD of the Act. The Transport agencies and tour operator earn income not only from commission as well as to arrange other types of tours and ticket services which is interrelated and interconnected. The expenditure is also intertwined and interconnected. It is difficult to separate the common expenses. As held in the case of *Setabganj Sugar Mills Ltd. v. CIT* (supra) the income falling under similar category cannot be segregated and forms the same business. In this case, the business of the assessee is tour operator, the ticketing, tour operation and other related services are interrelated. Therefore, these services cannot be separated and as per the validation rules, the business of the assessee falls under the eligible category for presumptive category, therefore, the assessee is eligible to declare the

income u/s. 44AD of the Act. Hence the return of income filed by the assessee is proper and we direct the Assessing Officer to drop the addition made in the Assessment Order.

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

Order pronounced in the open court on 23rd August, 2023.

Sd/-
(PAVAN K UMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 23/08/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum