

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.280/Ind/2023
(Assessment Years:2018-19)

Dinesh Ramnani 28, Gayatri Mandir Road Neemuch	Vs.	ITO Delhi
(Appellant / Assessee)		(Revenue)
PAN: AEHPR 9729L		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.11.2023	
Date of Pronouncement	23.11.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 12.04.2023 of Commissioner of Income Tax(Appeal), National Appeal Centre, Delhi for A.Y.2018-19.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. On perusal of the assessment order as well as the impugned order of the CIT(A) it transpires that there was no representation on behalf of the assessee before the AO and consequently the AO has passed the assessment order making addition on account of adopting net profit @ 8% by applying the provisions of section 44AD of the Act. Further the AO has also made certain disallowance of expenses and consequently the total addition of Rs.54,30,378/- was made by the AO.

3. The assessee challenged the assessment order before the CIT(A) but again there was no representation before the Ld. CIT(A) despite various notices issued to the assessee and consequently the CIT(A) has dismissed the appeal of the assessee for want of any reply and appearance on behalf of the assessee. Accordingly the bench proposes to hear and dispose of this appeal ex-parte.

4. The assessee has raised following grounds of appeal:

“1. Because the Ld CIT Appeal had erred in law in disposing ex-parte appeal without giving any chance as no notice on portal had been in the knowledge of appellant/assessee in the light of natural justice a chance of hearing may kindly be granted to the appellant/assessee. Which had not been granted CIT(A)N FAC.

2. Because on proper consideration of facts and circumstances of the case the addition of net profit amounting to Rs. 13,40,086/- Into business income applying net profit rate under Section 44AD and disallowance of commission expenses amounting to Rs. 40,90,292/- is arbitrary, unjustified, unwarranted, factually and legally not correct, therefore, entire addition amounting to Rs. 58,75,448/- is liable to be deleted.

3. Because the assessment framed under Section 143(3) read Section 144B of Income Tax Act, 1961 dated 22-04-2021 is without allowing reasonable opportunity for submissions before Assessing Authority National E- Assessment Centre, Delhi. Due to Covid situation, as stated in the Statement of Facts, were prevailing on those days with the Assessee Appellant, therefore, submissions placed herein before your honour at First Appellate stage may very kindly be considered for the disposal of this appeal and submission as well as additional evidences as submitted in Statement of Facts & Grounds of Appeal as well as by way of Written Submissions at the time of faceless hearing is liable to be accepted as an addition evidences.

4. Because National E-Assessment Centre Delhi has erred in facts as well as law both in applying Section 44AD of Income Tax Act, 1961 upon the facts of the case of Assessee Appellant in as much as lower profit was declared after duly compliance of provisions of Section 44AD. The books of account is maintained, audited by Chartered Account. Purchase, sales as well as expenses are vouched and verifiable, no specific justification has been brought by the Assessing Authority on record as to how and what expenses are not justified, the rate of net profit @ 8% upon total turnover or gross receipt application is neither factually justified nor legally valid and differential amount of addition amounting to Rs. 13,40,086/- (8% N.P.

of Turnover Rs. 18,18,157 minus declared Rs. 5,45,071) is liable to be deleted.

5. Because disallowance of alleged commission expenses dy detaced in trading A Profiles account is not able to be disablond specifically when the provisions of Section 44AD is being invoked by the Assessing money applying net proht rate @ By, thereafter no other expenses deed in Pront/Loss account may again the added in Business fret Profit and Income of the assessee Appellant. The disallowance of expenditure business incerti under the head Commission express es debited in Trading & account by way of addition into business income amount to Rs 40/0,201 Rable to be deleted.

6. Because alternatively, as stated in preceding Grounds of Appeal serialy numbered 4, the disallowance of commission expenses amounting to s 40,90,292/ is not factually justified in as much as the commission expenses has not been directly paid by the assessee to the sub-dealerts) and becau of this reason there was no T.D.S. tability upon Assessee/hopeat. The accounting to business incentive awarded by the Reliance Jio Mobile Netwo Company to sub-dealer(s) appointed by them is accounted for in our trading account. The Incentive by way of commission is awarded and paid by Peliance Jio Company to respective sub-dealers and not by the assessee Appellant. But the TDS is deducted by the Principal M/s. Reliance Jol Company on assesses account because of fact that assessee was his distributor of wide ares Instead of deducting separate TDS upon payment of incentive/commission to such respective sub-dealers. This being the reason the assessee Appellant accounted for such transaction rotated through him in his trading account crediting commission account and debiting commission expenses from the amount related to payment of sub-dealers, directly paid by Reliance Jo Company.. This factual position itself justify the head "Commission Experces debited in our Trading Account, therefore, no disallowance on such business Incentive commission may be made and the amount of alleged commission expenses may not be added into business income of Asse.

7. Because in any case and under all the facts & circumstances of the case the addition/disallowance Into business income of the assessee as stated herein above preceding paras of Grounds of Appeal is factually and legally not liable to be disallowed or added into total income of assessee Appellant, therefore, entire disputed addition of Rs. 58,75,448 is liable to be deleted."

5. The AO has framed the assessment by estimating the income of the assessee for want of any details and response to various notices issued

Trade & Profit/Loss account amounting to Rs. 5,45,070/- is liable to be accepted. The differential amount of net profit being applied 8% Net Profit i.e. Rs. 18,85,157/- minus Net Profit declared in return Rs. 5,45,071/-i.e. addition of Rs. 13,40,086/- is liable to be deleted.”

6. Thus it is clear that due to non-appearance on behalf of the assessee the CIT(A) has dismissed the appeal of the assessee. The Sr. DR has fairly submitted that this matter requires a reconsideration at the level of the AO as the assessee has not appeared either before the AO or before the CIT(A) and the necessary records and details as well as books of accounts of the assessee are required to be verified. We further note from the statement of facts that the assessee has given reasons for non-appearance before the AO due to prevailing Covid-19 pandemic and some of the family members of the assessee were affected with the virus and hospitalized during the month of April 2021. However, the assessee has not given any reasons for non-attendance or appearance in the proceedings before the CIT(A) as well as for not filing any submission or supporting evidence. Accordingly in the facts and circumstance of the case and in the interest of justice by taking a lenient view we set aside the impugned order of the CIT(A) and remand the matter to the record of the AO for fresh adjudication after giving one more opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on conclusion of hearing
on 23.11.2023

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 23 .11.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore