

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGOOR

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.248/NAG./2022
Assessment Year 2015-2016

Shri Kawaljeet Singh Arneja, 266, Kamptee Road, Chock Colony, NAGPUR – 440 014. Maharashtra. PAN AYJPA7314G (Appellant)	vs.	The Income Tax Officer, Ward-2(1), Aaykar Bhawan, Civil Lines, NAGPUR – 440 001. Maharashtra. (Respondent)
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For Assessee :	Shri Thakar, Advocate
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	19.03.2024
Date of Pronouncement :	09.05.2024

ORDER

This assessee's appeal for assessment year 2015-2016 arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2022-23/1043670461(1) dated 29.06.2022, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"The learned CIT(A) NFAC, Delhi erred in law as well as on the facts of the case in reaching to the conclusion that the*

assessee is not interested in pursuing appeal without appreciating the fact that most of dates of notices was during Corona Pandemic or immediate period after it.

- 2. The learned CIT(A) NFAC, Delhi erred in law as well as on the facts of the case in not considering various Judicial pronouncements where only reasonable percentage of undisclosed receipts were considered as income.*
- 3. The learned CIT(A) NFAC, Delhi erred in law as well as on the facts of the case in reaching to the conclusion that the assessee has taken ground at appeal stage that the difference in amount is only advance which were not considered as income during the impugned assessment year. However the assessee in his reply with A.O. Dt. 02/08/2017 has submitted that the assessee's income is only commission of Rs.500 to Rs.600 per truck for arranging truck. The A.O. himself has stated in assessment order that it is observed from assessee's bank account that he receives credit from parties for whom he arranges trucks and withdraws cash from time to time for making various payments.*
- 4. The appellant may be permitted to raise add amend alter all or any other grounds of appeal at the time of hearing.”*

3. Both the parties next took me to the CIT(A)'s detailed discussion rejecting the assessee's lower appeal as under :

“6. Findings and Decision : *The solitary issue raised in this appeal relates to addition of difference in receipts admitted in the profit and loss account and the receipts as per Form 26AS amounting to Rs.19,24,712. The facts of the case are adjudicated along with the grounds raised in this appeal.*

The AO has observed that the income of the appellant was computed by taking the gross receipts in the bank account and from the said receipts, the expenditure was deducted and net profit was computed at Rs.5,55,150. In Para 3 of the assessment order, AO has reproduced the statement of the authorised representative on 22.08.2017 which is extracted below :

“There is a difference of receipt of Rs.19,24,712 as per 26AS and as shown by him in his ITR. The probable income on such receipt as per the existing profit shown by the assessee in his profit and loss account could be Rs.1,90,000 which inadvertently remain to be included by the assessee in his total income. The assessee therefore surrenders the amount of Rs.1,90,000 for taxation with a request that the gross difference of receipt of Rs.19,24,712 should not be taxed”.

AO did not accept the contention of the appellant on the ground that the appellant has maintained details of expenses and receipts and the Profit and Loss account was prepared based on the above details and the entire expenses were debited in the profit and loss account and after closing the books, return was filed by the appellant. Hence the AO held that entire amount of Rs.19,24,712 has to be added to the total income.

Secondly, appellant also stated that he was only a commission agent and the receipts figuring in the bank account are advances from customers and it was not his income. AO contended that the advances credited in the bank account were utilised for various payments and the parties have also uploaded the credits in the name of the appellant and they are reflected in Form 26AS.

6.1. Adjudication : *The submissions and contentions of the AO have been considered along-with the statement of facts. Appellant in the statement of facts submitted that this difference was due to the fact because he has taken only the receipts in respect of which transaction were completed while preparing the return of income. The advance amount was not considered for the purpose of taking gross receipt. Since the assessee was not in a position to reconcile these figures the assessee has offered*

*Rs.1,90,000/- as income from the said receipt. As could be seen from the earlier paragraph, appellant requested to consider the income of Rs.1,90,000 from the excess receipts reflected in 26AS. At the appellate stage, he states that the said amount is advance which was not considered for income during the impugned assessment year. The appellant did not produce any details to substantiate his claim that the said receipts were only advances and the advances were offered as income in the subsequent year. The AO has analysed the books and construed that the entire expenditure was debited in the profit and loss account and against the income of Rs.19,24,712, appellant was not in a position to correlate the expenditure incurred during the year. In the absence of any evidence to the contrary, I am constrained to uphold the addition made by the Assessing Officer. This ground is **“Dismissed”**.*

4. Suffice to say, it has come on record that both the learned lower authorities have added the alleged difference in assessee's Form-26AS vis-à-vis the receipts declared in his profit and loss account for the sole reason that he had failed to produce all the relevant details indicating the corresponding receipts as only “advances” which stood offered as “income” in the subsequent assessment year(s). Faced with this situation, I deem it appropriate in the larger interest of justice to restore

the assessee's instant sole substantive ground back to the Assessing Officer for his afresh appropriate adjudication preferably within three effective opportunities of hearing subject to the rider that it is the assessee's sole risk and responsibility to prove the case in consequential proceedings. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 09.05.2024.

Sd/
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 09th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "Nagpur-SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.