

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 129/JP/2024  
निर्धारण वर्ष / Assessment Year : 2010-2011

Shri Harjeet Singh T-2/A-92, Sahyog Apartment, Sector-6 Vidhyadhar Nagar, Jaipur 302023	बनाम Vs.	The ITO Ward 4(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIDPS 3066 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal, CA  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 17/04/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10 /07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. Addl. CIT(A), Mysore dated 30-01-2024 for the assessment year 2016-17 raising therein following grounds of appeal.

“That the Id.CIT(A) has erred seriously in law and on facts in sustaining the order of the AO wherein he had estimated the income of the assessee at 8% on the alleged transport receipts of the appellant ignoring the factual position that the appellant is merely a commission agent providing commercial vehicles to the interested parties and receiving commission therefrom and also the fact that the appellant did not have any commercial vehicle during the year under consideration. It is therefore,

prayed that the addition of Rs.13,66,976/- made on this account may kindly be deleted.”

2.1 Apropos solitary ground of the assessee, it is noted that the Id. CIT(A) has dismissed the appeal of the assessee by observing at para 8.5 of his order.

“8.5 It is seen that during the assessment proceedings, the AO has discussed in detail regarding the every issue and claim of the appellant. The AO has also discussed that the appellant has not produced any books of accounts or furnished any documentary evidence which verifies the payment from the parties were received after the transport of goods. Even during the appellate proceedings, the appellant has failed to put forth his contentions with corroborating evidences. The mere claim of the appellant that he has received the commission receipts without any evidences cannot be entertained. In view of the foregoing discussions, it is opined that there is no need to interfere with the additions made in the assessment order. In view of the above legal position and the fact that the appellant has failed to prove his contentions, the AO has concluded the assessment by making addition @ 8% of the gross receipts. The assessment order passed by the AO does not require any interference in this regard. In the light of the above, it is held that the AO has reasonably made the addition @ 8% of the total receipts. Hence, the Ground No. 1 raised by the appellant is dismissed.”

2.2 During the course of hearing, the Id. AR of the assessee has filed the following written submission that the addition confirmed by the Id. CIT(A) deserved to be deleted.

“The appellant individual is a commission agent in the field of transportation. He runs his business as proprietor of M/s. Jaipur Nagpur Roadways at Plot No. 20, Anupam Vihar, Near Kukarkheda Anaj Mandi, Road No. 14, VKIA, Jaipur. He does not own any commercial vehicle. He procures orders from interested parties who wish to send goods to any place in India and based on their demands he arranges trucks for transporting the goods and issues his Bilty (GR Note) of his concern. In return he charges a commission from the truck owner/ truck driver. As the

consignee parties are companies they make payments to the appellant against the freight as per details mentioned on bills. The appellant retains his commission and pays the balance freight to the respective truck owner./ driver through banking channel or through cash. Accordingly the appellant had offered his income earned from commission only and claimed the TDS deducted by respective consignees. Based on the entries available in form 26AS the Id. AO alleged that the turnover as reflected in form 26AS is his own turnover and applied 8% rate of profit on such amount to assess the income of the appellant ignoring the vital fact that the appellant did not own any commercial vehicle and he earned income from commission only. The Id. CIT (A) has sustained the order by stating that the appellant failed to establish that the turnover as per form 26AS was not his own.

Ground wise submissions :-

**Ground No. 1 : That the Id. CIT (A) has erred seriously in law and on facts in sustaining the order of the Id. AO wherein he had estimated the income of the appellant at 8% on the alleged transport receipts of the appellant ignoring the factual position that the appellant is merely a commission agent providing commercial vehicles to the interested parties and receiving commission there from and also the fact that the appellant did not have any commercial vehicle during the year under consideration. It is therefore humbly prayed that the addition of Rs. 13,66,976 made on this account may kindly be deleted.**

The appellant had filed his ITR on 28.03.2017 declaring a gross commission receipts of Rs. 8,33,709 and after deducting expenses a net income of Rs. 4,21,360 (APB 1-2) has been declared in the ITR. The appellant had worked out this brokerage amount on total transport charges of Rs. 2.31 Crores yielding commission receipts @ 3.61% which is absolutely reasonable in this competitive business. During the assessment proceedings the appellant stated that he did not own any commercial vehicle and he has merely acted as bilty agent wherein he used to issue GR notes only. He fetched orders for transporting goods from one location to another and based there on he contacts interesting truck owners/ drivers and after settling the freight rates he issues GRs. The truck driver transports such gods at the desired location and send acknowledgement to the assessee. The consignee companies make payment through banking channel in the account of the appellant due to GR Notes issued by the appellant. The appellant makes further payment of the freight to the respective truck driver/ owner after retaining his agreed commission. The appellant mentioned this important fact before the Id. AO as well as Id. CIT (A) but none of them cared for deliberating on this important aspect and proceeded to treat the above stated turn over of

Rs. 2.31 Crores as pertaining to the appellant and applied a rate of 8% on such amount as income of the appellant.

The fact that the appellant was not owner of any commercial vehicle is further proved from the bank statement of the assessee with Bank of Baroda, Vidhyadhar Nagar, Jaipur (APB 3-24). A summary of the transactions in the said bank statement is as under

Opening balance as at 01.04.2015	7,50,916.50
Cheque Deposits (Freight) in the account	1,85,94,121.00
Cash deposits in the account	1,34,900.00
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Total Credits in the account	1,94,79,937.50
Less : Cheques issued to truck owners./ drivers	84,22,344.00
Cash withdrawls from account	93,00,900.00
Life Insurance premiums	69,177.00
Bank Charges debited	1,828.00
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Closing Balance as at 31.03.2016	16,85,688.50
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Had the appellant owned any commercial vehicle there would have been payments for diesel/ repairing/ tyres/ RTO payments etc. but no such entry exist in the bank statement and if per chance there is any same is only on behalf of the respective truck owner/ driver. Hence there is no doubt that the assessee did not own any commercial vehicle and he merely acted as commission agent for issuance of CR notes. Further it is amply proved by following verdicts that freight amounts in case of GR note agent is not his turnover :-

1. Hon`ble ITAT, Amritsar Bench in the case of Income Tax Officer v/s Bindra Ban Bansi Lal (78 ITD 228),
2. Hon`ble ITAT, Pune Bench in the case of Income ax Officer v/s Shantilal Chunilal & Co. (45 ITD 581)
3. Guidelines of The Institute of Chartered Accountants of India in their Guidance note for audit u/s 44AB wherein it has been stated that If the property in goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of sales/ turnover of the commission agent.

The appellant works only as a commission agent as his job is to issue GR note and charging his commission and thereafter the consignor/ consignee/ truck owner are the parties who bear all risks and rewards of the goods being transported. Even the appellant is not to bear any loss if any arising to the truck meeting out with an accident as he is not the owner of the truck and even the driver driving the vehicle as he is not his employee. Hence the appellant is to be characterized as Kachcha Aaratia as per circular no. 452 dated 17.03.1996 issued by CBDT. .

Therefore the action of the Id. AO and confirmation thereof by the Id. CIT (A) in considering the turnover of Rs. 2.31 Crores as belonging to the appellant is wrong and unjustified. Further the application of 8% profit on such alleged turnover is also legally incorrect as it seems that Id. AO has brought this profit rate into picture as per provisions of section 44AD of the Income Tax Act, 1961 which is not applicable on transporters and the transporter are governed by section 44AE of the Income Tax Act, 1961 but in section 44AE there is altogether different methodology for working out presumptive income which is based on profit per truck per month. Since the assessee is not owner of any commercial vehicle and hence section 44AE can also not be made applicable on the assessee.

It is therefore once again stated that the turnover of the assessee only comprises of his commission only which he has offered correctly. In this competitive business of transportation such commission rate is around 1 to 2% of the freight amount and not beyond this. Further in today`s market we can see that there is flood of supply of commercial trucks/ tankers etc. due to easy availability of 100% finance and due to such excess availability the consignors/ consignees have upper hand in negotiating freight rates due to which margin of profit is very thin in this line. From this bare fact reasonable commission for a GR note agent can easily be estimated.

Therefore the appellant has correctly offered his income which deserves to be accepted and the addition made by the Id. AO and confirmed by Id. CIT (A) deserves to be quashed.”

2.3 On the other hand, the Id.DR refuted the written submissions of the Id. AR of the assessee and relied upon the order of the Id. CIT(A).

2.4 The Bench has heard both the parties and perused the materials available on record. From the records, the Bench found that only reason for making the addition

by the AO is based on entries available in Form 26AS and the AO has considered that amount reflected in form 26AS is the turnover of the assessee and thus applied 8% rate of profit on such amount to assess the income of the assessee including the vital facts that the assessee is a commission agent in the field of transport and did not own any commercial vehicles and the only source of income of the assessee is commission. Whereas on the contrary, the ld. DR has vehemently argued that the assessee has declared the gross commission receipts of Rs.8,33,709/- in his ITR which at Paper Book pages 1& 2. While calculating the income of the assessee, the AO has applied commission @ 3.61% on total transportation charges of Rs.2.31 Crores. As per assessee, he has merely acted as Bilty Agent wherein he used to issue GR Notes only. The style of working as put forth before the Bench by the assessee is that the fetched orders for transporting goods from one location to another and based thereon, he contacts interesting truck owners / parties and after settling the freight rate, he used to issue GRs. The consignee companies make payment through banking channel in account of the assessee due to GR Notes issued by the assessee. Therefore, he makes the payment of freight to the respective truck drivers/ owners after retaining his agreed commission. The Bench noticed that no independent enquiry or verification of this factual aspect was carried out by the AO. As per record, no statement of consignee companies or respective owners of the drivers of truck were recorded by

the AO and nothing of this sort has been pointed out or placed before the Bench. It has also not been verified by the AO as to whether assessee was the owner of any commercial vehicles or not. The Bench further noticed that identical type of situations have already been dealt with by different tribunals wherein it has been held that the freight amount in case of GR Note is not to be considered as turnover of the assessee who is merely a Transport Agent as has been held by following Tribunals.

1. Hon`ble ITAT, Amritsar Bench in the case of Income Tax Officer v/s Bindra Ban Bansi Lal (78 ITD 228),
2. Hon`ble ITAT, Pune Bench in the case of Income ax Officer v/s Shantilal Chunilal & Co. (45 ITD 581)

In the case of Income ax Officer v/s Shantilal Chunilal & Co. (supra), moreover the Guidelines of The Institute of Chartered Accountants of India in their Guidance note for audit u/s 44AB wherein it has been stated that if the property in goods or all significant risks and rewards of ownership of goods continue to belong to the principal, the relevant sale price shall not form part of sales/ turnover of the commission agent. Hence, the Bench finds that Central Board of Direct Taxes vide its Circular No. 452 dated 17-3-1986 regarding the applicability of section 44AB in the cases of commission agents, arhatias etc provided certain clarifications, which are as follows:

"4.(i) A kuchha arhatia acts only as an agent of his constituent and never acts as a principal. A pucca arhatia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituents goods on his personal account and, thus, he acts as a principal as regards his constituent;

(ii) A kuchha arhatia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The pucca arhatia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent,

(iii) Though the kuchha arhatia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pucca arhatia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf,

(iv) The remuneration of a kuchha arhatia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pucca arhatia;

(v) The kuchha arhatia unlike the pucca arhatia does not have any dominion over the goods;

(vi) The kuchha arhatia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agents charges and certain out of pocket expenses whereas a pucca arhatia has a personal interest of his own when he enters into a transaction,

(viz) In the event of any loss, the kuchha arhatia is entitled to be indemnified by his principal as is not the case with pucca arhatia."

Vide para 5 of the said circular, the Board has further clarified that in the case of agent, whose position is similar to that of kuchha arhatia, the turnover is only the commission and does not include the sales on behalf of the Principals. In the instant case, it is clear that the assessee's business is of a transport booking agent, it is also an admitted position that trucks and other commercial vehicles are arranged from the market for carrying the goods to different places and in lieu of these services, the assessee was charging nominal commission from such truck owners. Such commission earned by the assessee has been shown in the Profit & Loss Account. As the Bench has already noted that the Board has clarified that in the case of agents, whose position is similar to that of kuchha Arhatia, the turnover is only the commission and does not include the sales on behalf of the principals. From the facts of the present case it is clear that the assessee is a transport booking agent and the turnover is only the commission received from truck owners and suppliers of goods and, therefore, it can be safely held that the assessee's position is similar to that of Kuchha Arhatia. In the instant case, the AO without appreciating the facts of the case has held that the provisions of section 44AB of the Act are applicable. In fact, he has not properly appreciated the facts of the case as well as the relevant provisions of law. Thus, in view of the Board's Circular referred to above, the assessee was not required to audit its accounts under section 44AB of the Act. Hence, in view of the above deliberations as discussed in the case of the

assessee, the Bench does not concur with the findings of the ld. CIT(A) and delete

the addition confirmed by him. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 10 /07/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

\*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Harjeet Singh, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(2), Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 129/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar