

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.289 & 290/Nag./2023

(Assessment Year : 2013-14 & 2014-15)

Amarchand Laxminarayan Mantri
C/o Prop. Deepak Udyog
Sanskar, Ambadevi Road
Balaji Plots, Amravati 444 601
PAN – AAWPM2403M

..... Appellant

v/s

Income Tax Officer
Ward-3, Amravati

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 02/09/2024

Date of Order – 18/09/2024

ORDER

These appeals have been filed by the assessee challenging the impugned order dated 15/06/2023, passed for the assessment year 2013-14 and order dated 13/06/2023, passed for the assessment year 2014-15, by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*].

2. When these cases were called for hearing, none appeared on behalf of the assessee. There is no application by the assessee appellant seeking adjournment either. However, I proceed to dispose of these appeals ex-parte

qua the assessee appellant and after hearing the learned Departmental Representative and on the basis of material available on record.

ITA no.289/Nag./2023
Assessee's Appeal – A.Y. 2013-14

3. The assessee has raised following grounds:-

"1. That keeping in view facts of the case, the Hon'ble C.I.T. (Appeals) erred in confirming the addition of Rs.6,89,520/- on account of commission expenses out of total commission of Rs.11,19,316/-. The addition is improper, unjust & deserves to be deleted.

2. That keeping in view facts of the case, the Hon'ble C.I.T. (Appeals) erred in confirming the addition of Rs.6,00,000/- being the amount deposited in HDFC Bank by treating the same as undisclosed income, though the same is withdrawn from the regular cash book. The addition is improper, unjust & deserves to be deleted.

3. That any other ground/ (s) that may be raised at the time of hearing.

4. Facts in Brief:- The assessee is a Proprietor of M/s. Dipak udyog, which is engaged in the business of trading in cotton lint, oilseed, ginning and pressing and filed its return of income on 03/10/2013, disclosing total income of ₹ 10,19,840. The Assessing Officer noted that the assessee is maintaining books of accounts which were duly got audited under section 44AB of the Income Tax Act, 1961 ("*the Act*"). When demanded by the Assessing Officer, the assessee produced its books of account, bills & vouchers and the same were examined by the Assessing Officer on test check basis. On verification of Profit & Loss Account, it was noticed that the assessee had claimed brokerage and commission expenses to the tune of ₹ 11,79,316. Hence, the assessee was asked to produce the bills and vouchers of the brokerage expenses along with ledger account copies. The assessee produced the brokerage bills. The Assessing Officer doubted the bills of brokers Shri Ram Jajoo, Shri Shyam

Jajoo, Ashok Jajoo (HUF) and Shri Mahendra Purushottam Tiwari, which, according to the Assessing Officer, to be self-made and prepared on computer. To verify the same the assessee was asked to submit the account copies of the brokers showing the transactions carried out through them on which brokerage is paid. The assessee produced the list showing the details date of transactions, name of parties to whom the bales sold, number of bales sold, bill number and rate. While verifying the purchase-sale bills it is noticed that the names of these brokers do not appear on the bills. But the bills bear names of some other brokers. The names of the brokers on the bills were different from the brokers to which brokerages was paid. On some bills the names of the brokers were struck off by applying white ink. Bills of Shri Ram Jajoo and Ashok Jajoo (HUF), the brokers shows amount of ₹ 3,00,000, and ₹ 1,45,000, respectively. However, the ledger account copies submitted shows amount of brokerage paid to these persons at ₹ 3,50,000, and ₹ 1,50,000, respectively. Thus there is a difference in the amounts of brokerage. To verify these issues the above named brokers were summoned. The brokers were required to attend on 26/02/2016. Ashok Jajoo (HUF) attended and informed that the brokerage bill produced by the assessee stated to be belonging to Ashok Jajoo (HUF) do not pertain to him. He also stated that the signature on the bill also do not belong to him. Thus, from his statement it was concluded that Ashok Jajoo (HUF) has never worked as a broker for M/s. Deepak Udyog and has never earned brokerage from M/s. Deepak Udyog. It is further concluded that he is not a genuine broker. Accordingly, the Assessing Officer was of the opinion that the brokerage paid to Ashok Jajoo (HUF), Shri Ram Jajoo, Shri Shyam Jajoo and Shri Mahendra Tiwari at ₹ 1,45,000, ₹ 3,50,000,

₹ 44,520 and ₹ 1,50,000 aggregating to ₹ 6,89,520, is bogus and hence disallowed and added to the total income of the assessee.

5. The learned CIT(A) confirmed the order so passed by the Assessing Officer by observing as follows:-

"In appeal, the assessee has stated that the brokerage to the same brokers was allowed in preceding years, no statement of broker was provided to the assessee, payment of commission was made by account payee cheque and brokers have disclosed their income in their returns.

It is noted that the principle of res judicata does not apply to income tax proceedings. The allowing of brokerage to the same brokers in preceding years cannot come to the rescue of the appellant in view of the deep investigation into the issue carried out by the AO in the assessment for A.Y.2013-14 as brought out in the assessment order and mentioned above in brief. The mere fact of payment of commission by account payee cheque cannot also come to the rescue of the appellant. Though the assessee has made much of the accounts having been audited, it is mentioned in the notes to accounts of the audit report itself that "Further most of the expenses debited in Profit and Loss account are not supported with the evidences" and "Wherever the payments is excess of Rs.20,000/- have been shown as made by Bank Cheque/Bank Draft, the same could not be verified whether made by an account payee Bank Cheque/Bank Draft, as the required evidences were not in the possession of the Assessee. No evidence of the purported brokers having disclosed their income in their returns has been submitted in appeal.

In the totality of circumstances as mentioned above, there is no reason to interfere with the order of the AO.

6. The assessee contested the disallowance, presented detailed arguments to justify the brokerage payment. The assessee provided evidence of I.D. proofs and payment vouchers supporting the brokerage payments. Additionally, the assessee addressed each objection raised by the Assessing Officer before the learned CIT(A), and prayed for deletion of addition on account of brokerage since the genuineness and commercial expediency was fully established.

7. On the other hand, the learned Departmental Representative vehemently relied upon the order passed by the learned CIT(A) and submitted that the expenses being bogus are liable for disallowance in its entirety.

8. I have heard the arguments of the learned Departmental Representative, perused the material available on record and gone through the orders of the authorities below. I find that there is no justification for the disallowance of brokerage payment, because the Assessing Officer and the learned CIT(A) simply denied the claim of brokerage payment in the absence of concrete objections, especially when the books of account have been audited free from defects and infirmities and not rejected. I also find no justification for the disallowance of brokerage payments, when the evidences are adduced by the assessee which has not been considered by the authorities below. All the purchases, sales and expenses are supported by bills and vouchers and during the course of business. The assessee is required to pay brokerage on the turnover of sales to the agents and is following some practice from time immemorial. I find that the Assessing Officer failed to consider these submissions and evidences adduced by the assessee. I also find from the orders of the authorities below that the assessee has indeed addressed each and every objections raised by the Assessing Officer before the learned CIT(A) who remained a silent spectator and passed a cryptic order. Thus, I am of the opinion that the order passed by the Assessing Officer and confirmed by the learned CIT(A) are not at all justified and in the interest of justice, the addition on brokerage payment cannot be confirmed.

Consequently, I set aside the impugned order passed by the learned CIT(A) and the addition of ₹ 6,89,250, is hereby deleted. Ground no.1, is allowed.

9. In ground no.2, to Assessing Officer made addition of ₹ 6 lakh towards cash deposit in bank treating the same to be unexplained.

10. The Assessing Officer disallowed the deposit of ₹ 6 lakh on 11/10/2012, in the HDFC bank bearing account no.000069106, which is in the name of the assessee. The Assessing Officer noted that all the transactions in assessee's bank account are reflected in assessee's regular books of account. The Assessing Officer sought explanation, vide notice dated 10/03/2016, from the assessee, in response to which the assessee filed reply dated 15/03/2016. However, the Assessing Officer made addition of ₹ 6 lakh which was added to the total income of the assessee, as he considered the same to be concealed income.

11. The learned CIT(A) confirmed the order passed by the Assessing Officer. By dismissing the appeal of the assessee, the learned CIT(A) observed as follows:-

"In appeal, the assessee has stated that the amount deposited was out of cash book which is audited and duly produced before AO. Assessee has enclosed cash book extract dated 08.10.2012 to 15.10.2012. However, it is noted that extract of cash book merely from 08.10.2012 to 15.10.2012 cannot suffice in the absence of submission of complete cash book which has not been produced before AO after specific query regarding cash deposit was made by AO vide show cause notice dated 10.03.2016 nor in appeal proceedings. Though the assessee has made much of the accounts having been audited, it is mentioned in the notes to accounts of the audit report itself that "Further most of the expenses debited in Profit and Loss account are not supported with the evidences" and "Wherever the payments is excess of Rs.20,000/- have been shown as made by Bank Cheque/Bank Draft, the same could not be verified whether made by an account payee Bank Cheque/Bank Draft, as the required evidences were not in the possession of the Assessee.

In the totality of circumstances, there is no reason to interfere with the order of the AO."

12. I have heard the arguments of the learned Departmental Representative, perused the material available on record and gone through the orders of the authorities below. I find that the Assessing Officer and the learned CIT(A) have not rejected the submissions of the assessee that all the transactions are reflected in the regular books of account which are duly audited. Without any cogent reason, the Assessing Officer and the learned CIT(A) failed to consider the submissions of the assessee dated 15/03/2016. I find that the assessee has deposited ₹ 6 lakh on 11/10/2012, in HDFC Bank and the same was duly reflected in day-to-day balance as per cash book also. Since the amount deposited is out of balance in hand reflected in cash book and hence it is not the case that it is unexplained. I find that the assessee has also furnished cash book extracts dated 08/10/2012 to 15/10/2012, wherein it is seen that cash of ₹ 6 lakh is deposited in the HDFC bank. With these observations, I hold that the Assessing Officer was not at all justified in making addition of ₹ 6 lakh on account of cash deposited the bank account. Accordingly, I set aside the impugned order passed by the learned CIT(A) and allow the ground no.2, raised by the assessee.

13. In the result, appeal for the A.Y. 2013-14, filed by the assessee is allowed.

ITA no.290/Nag./2023
Assessee's Appeal – A.Y. 2014-15

14. The assessee has raised following grounds:-

"1. That keeping in view facts of the case, AO erred in making addition of Rs.1,46,033/- u/s 40(a)(ia) of I.T. Act, 1961, though form No 15G/H are received by the assessee & the same are forwarded to CIT Nagpur. The addition deserves to be deleted.

2. That the addition of Rs.1,43,066/- in the returned income is not proper and deserves to be deleted.

3. That any other ground/ (s) that may be raised at the time of hearing."

15. The assessee has filed its return of income disclosing total income at ₹ 12,49,430. The Assessing Officer noted that the assessee has paid interest to 17 different parties, out of which, TDS is not deducted from three parties. The Assessing Officer made addition under section 40(a)(ia) of the Act on the ground that there is no proof that the assessee has delivered Form 15G/H to CIT-III, Nagpur, in time.

16. Before the learned CIT(A), the assessee submitted that the entire amount of interest should not have been disallowed due to subsequent amendment in section 40(a)(ia) of the Act which has been held to be disallowed due to subsequent amendment in section 40(a)(ia) of the Act which has been held to be retrospectively applicable and instead only 30% of the aggregate amount should have been disallowed. However, the learned CIT(A) rejected the contention of the assessee as not tenable, as, according to the learned CIT(A), the amendment brought by Finance Act 2014, restricting disallowance of expenditure to 30% has been given w.e.f. 01/04/2015. Accordingly, the learned CIT(A) dismissed the ground.

17. Before us, the learned Departmental Representative submitted that the provisions of section 197A(2) has to be read as a whole to understand the scheme of the said provision and, therefore, obtaining the declaration in Form

No.15G/15H will not serve the purpose and objects of the said provision, until and unless the said declaration is submitted to the concerned CIT on/or before 7th day of the month next following the month in which the same is received so that the income in the hands of the recipient shall not escape from tax. He has relied upon the orders of the authorities below.

18. I have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. I find that the assessee obtained Form No.15G from the recipients of the interest, but we find that the Assessing Officer did not accept this contention and rejected it without any cogent reason, which, in our opinion, the Assessing Officer is not justified. As regards Form no.15G, obtained by the assessee, the Assessing Officer again rejected the said contention on the ground that the assessee has not submitted these forms before the learned Commissioner of Income Tax (Exemptions) within the period of limitation as prescribed under section 197A(2) and consequent to which the Assessing Officer made disallowance of the said amount under section 40(a)(ia) of the Act. In my considered opinion, the Assessing Officer ought to have not rejected this contention without giving and justifiable reason more so when the same was received by the CIT ON 24/06/2014. In view of my above findings, the impugned order passed by the learned CIT(A) is set aside by allowing ground no.1 and 2, raised by the assessee. Late submission of declaration form cannot artificially a tax burden particularly when the same is genuine. Since relief is granted on facts, it is not deemed necessary to dilate on the amendment in section 40(a)(i) of the Act.

19. In the result, appeal filed by the assessee for A.Y. 2014-15 is allowed.

20. To sum up, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 18/09/2024

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

NAGPUR, DATED: 18/09/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

By Order

Sr. Private Secretary
ITAT, Nagpur