

आयकर अपीलीय अधिकरण, कोलकाता पीठ "एसएमसी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH: KOLKATA

कुमारी मधुमिता राय, न्यायिक सदस्य के समक्ष

[Before Ms. Madhumita Roy, Judicial Member]

I.T.A. Nos. 1955 & 1956/Kol/2024
Assessment Years: 2017-18 & 2018-19

M/s Nabagram Santana Indane Gramin Vitrak (PAN: AANFN 4165 E)	Vs.	ITO, Ward-3(1), Suri
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	14.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.10.2024
For the Appellant/ निर्धारिती की ओर से	Natabrata Bhattacharya, Advocate
For the Respondent/ राजस्व की ओर से	Shri Pradip Kumar Biswas, Addl. CIT

ORDER / आदेश

Both the appeals filed by the assessee are directed against the orders both dated 24.07.2024 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as the 'Ld. CIT(A)'] arising out of order dated 17.03.2022 and 28.02.2023 under Section 147 r.w.s 144B of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] for the Assessment years 2017-18 & 2018-19 respectively. Since both the appeals relate to the same assessee and the issue involved is identical,

these are heard analogously and are being disposed off by a common order for the sake of convenience.

2. The assessee before us is a registered Distributor of LPG gas cylinders in the rural areas of West Bengal. Such business is regulated in terms of sale price of LPG gas cylinders as well as distributor's commission so fixed and determined by the Government of India from time to time, relevant documents in support of the same are annexed to the paper book filed before us mainly at pages 6, 10 and 13 thereof.

Information in relation to cash deposit/withdrawal to the tune of Rs. 2,10,43,400/- made by the assessee in the bank account with SBI Nabagram Branch, the case of the assessee was reopened under Section 147 of the Act. A notice under Section 148 of the Act was issued to the assessee. Such reassessment was finalised upon making addition of the entire amount of Rs. 2,10,43,400/- in the absence of any justification and corroborative evidence filed while explaining such cash deposit before the Learned Assessing Officer. However, the Ld. CIT(A) has restricted the addition to 10% of net sales of Rs.2,62,59,157/- by passing a direction to that effect upon the Ld. Assessing Officer. Hence the instant appeal before us.

The Learned counsel appearing for the assessee filed a written submission and submitted before us that as the net profit margin of the assessee is only 3.86% out of 4.75% as establishment charge, the finding of the First Appellate Authority i.e. 10% of the normal net profit in the appellants business is erroneous and thus, liable to be set aside.

3. Upon perusal of the orders passed by the authorities below and the documents placed before us by the assessee it appears that the distributor's commission is of two components; delivery charges which is found to be conditional as per clause 9 of page 11 of the paper book which speaks as "*customers who collect the refills directly from the distributors premises will continue not to be charged the delivery charges element as detailed in table against Para 6 above.*" The other component is the establishment charges which is the commission for the purpose of running the establishment. As the

delivery charges is in the nature of reimbursement only, the establishment charges is, thus, only available to the assessee.

4. As per records, the turnover of the establishment is Rs. 2,62,88,976.98/- and the assessee has availed the establishment charges of Rs. 12,49,562.16/- which is 4.75% of the turnover. Out of the same the assessee utilized Rs. 2,34,003.19/- only i.e. 0.89% and offered Rs. 10,15,559/- (Net profit Margin) towards Income Tax. Such establishment charges used by the assessee is found to be reasonable. Moreso, the assessee has offered 3.86% out of 4.75% available as establishment charges/profit margin towards income tax which is majority of its gross earnings. Such fact has not been able to be controverted by the Ld. D.R.

5. Hence, taking into consideration the entire aspect of the matter when the assessee has earned net profit of 3.86%, the finding of the First Appellate Authority that the assessee is having 10% as normal net profit, particularly, having regard to the business of the assessee, is found to be not sustainable and direction to the AO for making disallowance to that effect is found to be invalid and therefore, quashed.

6. Having regard to the identical facts of the matter the above order is also applied in ITA No. 1956/Kol/24 for AY 2018-19.

7. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 16th October, 2024

Sd/-

Madhumita Roy (मधुमिता राय)

Judicial Member/न्यायिक सदस्य

Dated: 16th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Nabgram Santana Indane Gramin Vitrak, Vill & P.O-Nabagram, P.S. Nabagram, Lalbagh, District-Murshidabad, West Bengal-742184
2. Respondent – ITO, Ward-Suri, Birbhum
3. Ld. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata