

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

[Before Shri Sanjay Garg, JM & Shri Rajesh Kumar, AM]

I.T.A. No. 1011/Kol/2023

Assessment Year: 2016-17

Rajkumari Agarwal, C/o, S. N. Ghosh & Associates, Advocates, 2, Garstin Place, 2 nd Floor, Suite No. 203, Off hare Street, Kolkata- 700001. (PAN: AFTPA3182R)	Vs.	Income Tax Officer, Ward-23(3), Hooghly.
Appellant		Respondent

Date of conclusion of Hearing	25.11.2024
Date of Pronouncement	05.12.2024
For the Assessee	Shri Somnath Ghosh, Advocate
For the Revenue	Shri Subhro Das, Addl. CIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

The captioned appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 24.07.2023 for AY 2016-17 arising out of assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by ITO, Ward-23(2), Hooghly dated 02.11.2018.

2. The assessee in the various grounds of appeal has challenged the impugned order of Ld. CIT(A) upholding the addition of Rs.1,12,48,990/- as made by the AO on the basis of Form 26AS in respect of transport receipts income shown by the assessee in the books of account.

3. The facts in brief are that assessee on 08.06.2016 declared total income of Rs.8,01,330/-. The case was selected for limited scrutiny under CASS for the reason that whether the contractual receipt/fee as have been offered to tax. Accordingly, notice was issued and served on the assessee. The assessee filed before the AO some information/details. However, the AO on perusal of the same came to the conclusion that there are certain apparent

discrepancies in the receipt shown by the assessee in the books of account vis-à-vis the receipt as shown in Form 26AS. It is pertinent to note that assessee is engaged in the business of transport. During the year, the assessee has shown the receipts from truck hire charges of Rs.2,11,40,672/- vis-à-vis the total receipts appearing in Form 26AS Rs.3,23,89,662/-. During the period 01.04.2015 to 31.03.2016, the assessee was given several opportunities by the Ao to explain the difference. However, there was no compliance and finally, the AO added the difference of Rs.1,12,48,992/- as income of the assessee. The AO while making the disallowance noted that assessee has received the truck hire charges from M/s. Glovis India Pvt. Ltd. Rs.3,23,70,662/- and from M/s. Mahesh Vora Rs.19,000/- aggregating to Rs.3,23,89,662/- on which TDS of Rs.2,11,421/- was deducted. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“5.1 I have gone through the assessment order and grounds of appeal. The learned AO has carried out addition on account of difference in the revenue appearing in income tax return and receipts appearing in 26 AS.

In this regard the appellant has raised multiple grounds of appeal which disposed off collectively as under.

5.2 During the assessment proceedings the learned AO observed that the appellant had offered sum of Rs.8,01,3301- to tax and she had considered gross revenue of Rs.2,11,40,672/-. Whereas during the assessment proceedings, on perusal of form 26AS, it was observed that the appellant had earned gross revenue of Rs.3,23,89,662/-. In this regard, the learned AO asked the appellant to explain the reason for the differences.

5.3 Despite multiple opportunities, the appellant did not file any response and therefore the learned AO added differential revenue of Rs.1,12,48,990/- to tax.

5.4 During the appellate proceedings the appellant submitted that it had got books of accounts audited on 16-05-2016 whereas form 26AS was updated afterwards. Therefore, she had missed considering revenue for last quarter in her income tax return. She also submitted that she has not claimed expenses incurred against this revenue. The appellant agreed to offer 4.5% of such revenue as taxable income; since she has offered 4.5% as net profit in the income tax return.

5.5 The contentions of appellant are not found to be acceptable because there is no provision in the Income Tax Act which allows presumptive profitability of 4.5%. In other words, the appellant has submitted that she has not claimed expenses of rupees 1,07,42,785/- (95.5% of 1,12,48,990) and the same cannot be accepted in absence of an information/supporting evidences.

5.6 The conduct of appellant indicates that she has not maintained proper books of accounts because as per her submission, for the purpose of audit she had relied upon information appearing in 26AS. Thus the audited profit and loss account is also not to be considered as reliable.

5.7 Further, the appellant has also not filed details of expenses which are not claimed and has not filed supporting evidences such as ledger extract, proof of payment, copies invoice, nature of expenses, etc. there to. Therefore, it is held that the appellant has failed to discharge onus of substantiating correctness of her claim.

5.8 In the submission the appellant has relied upon judicial precedents where presumptive rate of tax is being applied. I have considered said judicial precedents and it is found that the ratio of such precedents is not applicable in the underlined case. In the judicial precedents relied upon by the appellant, the estimation of net profit is made on cash deposited in the bank account. Whereas in the appellant's case, she has omitted reporting revenue as part of total income.

5.9 In view of the above I am of the considerate opinion that the claim of appellant for allowability of expenses are academic in nature and not backed by any concrete documentary evidences and therefore the same cannot be allowed.

5.10 Also the proposition of appellant to offer 4.5% of unreported revenue as taxable income is also not found acceptable. Therefore, the entire sum of Rs.1, 12,48,990/- is correctly being added by the learned AO and the same is being upheld.”

4. After hearing both the parties and perusing the material available on record, we find that apparently there was a difference in the receipt from truck hire charges recorded by the assessee in the books of account vis-à-vis the receipts appearing in Form 26AS i.e. (transaction statement). We note that the gross receipts from hire charges were Rs.3,23,89,662/- whereas the assessee has only accounted for Rs.2,11,40,672/- in the P & L Account. We note that books of account of the assessee was audited, the Form 26 AS was updated and hence, this anomaly of accounting for the truck hire receipts is found. The assessee's counsel vehemently submitted before us that since the rate of profit declared in receipt by the assessee during the year was only 4.5%, therefore, the same may kindly applied to the unrecorded receipt of Rs.1,12,48,910/- whereas the revenue, on the other hand, claimed that the assessee's expenditure qua the receipt have already been accounted for by the assessee in the books of account and, therefore, prayed before the Bench that the entire receipt be confirmed in the hands of the assessee by confirming the order of the Ld. CIT(A).

5. Considering the facts available before us, we find some merits in the argument of Ld. Counsel for the assessee as well as the Ld. DR so far as the argument of the Ld. AR is concerned that 4.5% rate of profit may be applied on the undisclosed receipt, we do not find any merit in that argument because certain fixed type of expenses have already been booked in the books of account such as maintenance of truck, salary and wages etc. whereas the

variable expenses may not be accounted for and made out of books of account. Accordingly, we find merit in the contention of the Ld. AR that 4.5% is not sufficient. Considering the totality of facts, we are of the view that it would be reasonable and fair to estimate the income @ 6% on the undisclosed receipts. Accordingly, we set aside the order of the Ld. CIT(A) and direct the AO to apply a rate of 6% on the undisclosed receipt. Appeal is partly allowed.

6. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 5th December, 2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 5th December, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–Sm. Rajkumari Agarwal
2. Respondent – ITO, Ward-23(2), Hooghly
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata