

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH(SMC),
RANCHI**

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 36/Ran/2024 (Assessment Year 2016-17)

Ramesh Keshri, Near Suzuki Showroom, Piska More, Ranchi-834005 (Jharkhand) PAN No. AFTPK 1039 B	Vs.	I.T.O., Ward 2(3), Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri J.P. Sharma, A.R.
Department represented by	Shri Khubchand T. Pandya, Sr.DR
Date of hearing	22/01/2025
Date of pronouncement	04/02/2025

ORDER

PER: PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER:

1. This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 04/01/2024 for the Assessment Year (AY) 2016-17 as per the grounds of appeal on record.
2. This is a case of disallowance of trade discount. At para four (4) of the assessment order, it is noted as follows:

"4.0 A letter under section 133(6) of the Income Tax Act, 1961 was issued to M/s Neutral Publishing House Limited on 20/09/2018. The contents of the letter are reproduced as under:

"The case of Shri Ramesh Keshri, PAN: AFTPK 1039 B, has been selected for scrutiny relevant to A.Y. 2016-17. The assessee has claimed commission income from sale of newspaper in the name and style of M/s Rupes News Agency, Birsa Chowk. You are requested to kindly confirm the genuinity of the assessee and also furnish the following details:

1. *Total transaction made by you and discount thereon during the F.Y. 2015-16, after considering the unsold newspaper etc.. Please provide the consolidated figure of the whole year."*

Vide letter dated 25.09.2018, M/s Neutral Publishing Housing Limited submitted the details called for. As per their submission, they have paid no commission, instead, total discount (trade) allowed by them to the assessee against

purchase of Rs. 10230561/- during the financial year 2015-16 is Rs. 36,52,199/- . They have submitted copy of the agreement made between the two parties which is placed on record."

That as evident, the trade discount of Rs. 36,52,199/- had been given to the assessee by M/s Neutral Publishing House Limited. That on the relevant date before the Assessing Officer, the assessee was not able to comply and was absent from hearing and accordingly, the Assessing Officer added a sum of Rs. 34,83,349/- (difference between the total discount received and the amount already offered to tax by the assessee as commission income) was added back to the total income of the assessee.

3. Before the Id. CIT(A), it was observed and held as under:

"5.3 During the appellant proceedings, the appellant has stated that during the period, he was engaged in reselling newspapers. He had purchased newspapers from Neutral Publishing House Limited @ MRP less 36% and sold @ MRP less 30% and thus difference of 6% was his margin. However, the appellant had failed to produce the documentary evidence in respect of the commission received from newspaper business.

5.4 Carefully considering the above facts, I hold that the appellant had failed to furnish any proof of commission received from newspaper business during assessment proceedings as well as during appellant proceedings. Therefore, the addition of Rs. 34,83,349/- made by the AO is hereby confirmed."

4. At the time of hearing, the learned Authorised Representative (Id. AR) of the assessee submitted that with regard to total addition, the trade discount was Rs. 36,52,199/- @ 36%, less Rs. 1,68,850/- (profit already shown by the assessee as per Section 44AD of the Income Tax Act, 1961) which comes to Rs. 34,83,349/-, this is the total addition made by the Assessing Officer for which the tax effect is Rs. 13,67,270/-. The Id. AR of the assessee further submitted that the assessee has recorded purchases after giving effect to trade discount.

5. Per contra, learned Senior Departmental Representative (Id. Sr.DR) for the revenue supported the findings of the revenue authorities.
6. I have carefully considered the rival submissions of both the parties, documents on record and the facts and circumstances of this case. In this case, certain trade discount was given to the assessee and the assessee had recorded the purchases after giving effect to the trade discount. The assessee had shown profit @ of Rs. 1,68,850/- as per Section 44AD of the Act. The department has given credit to this disclosed profit. That both in the order of Assessing Officer as well as the Id. CIT(A), nowhere any justification has been given for denial of the trade discount. This is a case where the assessee was engaged in reselling of new papers. He had purchased news papers from M/s Neutral Publishing House Limited @ MRP less 36% and sold @ MRP less 30% and thus, difference of 6% was his margin. Further, the Assessing Officer vide letter under Section 133(6) of the Act had verified from M/s Neutral Publishing House Limited that they have provided trade discount of Rs. 36,52,199/-. That when such trade discount given by the seller to the assessee who had purchased the newspaper and when the department has not shown any contrary findings with regard to assessee and also when the department has not proved the non-genuinenity if any of such trade discount, in such scenario, upholding the addition by the Id. CIT(A) has held to be arbitrary, excessive and bad in law. The department accepts the declaration by M/s Neutral Publishing House Limited for granting of trade discount to the assessee. In the case of Nokia India Pvt. Ltd. Vs Addl.CIT ITA No. 6502/Del/2017 A.Y. 2013-14 order dated 16/12/2021, it was held that the trade discount provided to the assessee

was allowed for the reasons that it was market practice and at the same time it was for the business exigencies. That when the assessee is entering into commercial transaction it is the assessee who is the best judge to decide whether to enter into such transaction or not and if it is for business benefit that has to be allowed. In the present factual situation, undoubtedly, the trade discount has been provided to the assessee purchaser and it was also admitted by M/s Neutral Publishing House Limited as per letter under Section 133(6) of the Act. That as per the normal trade practice and established judicial principles, the trade discounts by whatever name it is called, would be allowed to be deducted from the sale price having regard to the nature of goods if established under an agreement or under terms of sale or by established practice. The allowance and the nature of discount being none at or prior to the removal of goods, such trade discount shall not be disallowed merely because they are not payable at the time of removal of goods or at the time of invoices. Trade discount can be given at the time of sale or on subsequent date so long as such discounts are given with reference to sell. Trade discounts are permissible if they are not determined on any extra commercial consideration. Reverting to the facts of the present case, the entity M/s Neutral Publishing House Limited has sold newspapers and the assessee had purchased. The trade discount has been given for this transaction only and was not determined on any other extra commercial consideration. Even the Id. Sr.DR for the revenue could not produce any evidence in support of findings of Id. CIT(A) as to why such trade discount should not be given to the assessee. Considering

the totality and facts and circumstances of the case, I set aside the order of Id.
CIT(A) and allow the appeal of the assessee.

7. In the result, this appeal of assessee is allowed.

Order announced in open court on 04th February, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Ranchi, Dated: 04/02/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi