

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री धुव्वुरु आर.एल रेड्डी,, उपाध्यक्ष एवं श्रीएस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE PRESIDENT
AND SHRI S.R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 2381/Chny/2024
निर्धारण वर्ष / Assessment Year: 2018-19

Ascon Travel Pvt. Ltd.,
City Centre, 4th Floor,
Radhakrishnan Road,
Mylapore,
Chennai – 600 004.

**The Assistant Commissioner
of Income Tax,**
V. Company Ward I(1)
Chennai.

[PAN:AAACA 6292P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.03.2025

घोषणा की तारीख/Date of Pronouncement

: 28.03.2025

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.08.2024 for the assessment year 2018-19.

2. The assessee has raised the following grounds:-

1. *Commissioner of appeals is not correct in confirming the order of the ITO passed u/s.143(3) r.w.s 144B of the I.T.Act without giving sufficient opportunity to your petitioner to explain its case and to file the relevant details.*
2. *The CIT is not correct in confirming the order of ITO rejecting the books of accounts when your petitioner has been maintaining books of accounts according to the principles accepted by the accounting standards, duly audited every year regularly and your petitioner accounts were audited u/s.44AB of the IT Act and there is no deviation/change in the method of accounts.*
3. *The CIT is not correct in confirming the order of ITO arbitrarily rejecting the books of accounts, make best judgement assessment and apply a net profit rate/ratio without justifying the basis.*
4. *The CIT is not correct in confirming the order of the ITO exercising his power in invoking Sec.145(3) judiciously and not arbitrarily.*
5. *The CIT is not correct in not considering the fact that your petitioner's office was closed from 22nd March to November 2020 due to covid 19pandemic and due to the travel ban imposed by the Government of India, your petitioner has closed down its operation in Chennai and Bangalore branches and could not reply to the notices.*
6. *The CIT ought to have considered the financial statements and audit report filed u/s.44AB of the IT Act and the reconciliation statement filed between income offered in financial statement and 26A5 and all the expenses are duly supported by vouchers and ought not to have confirmed the order of the ITO rejecting the books of accounts and estimating the income based on turnover.*
7. *The CIT is not correct in rejecting your petitioner's claim of carried forward loss from the earlier asst years when it was clearly qualified and there is no need to claim separately in the return of income. As your petitioner has filed a return claiming loss only and there is no income to claim carry forward loss.*
8. *The CIT has not considered the extraordinary situation of COVID 19 and resulted lockdown and is not correct in comparing the expenses with last year and rejecting the books.*
9. *The CIT has not considered the fact that your petitioner has filed all the details called for and the ITO's contention that your petitioner has not filed the bills and vouchers is not correct.*

10. Confirming the order of the ITO by the CIT is against the principle of natural justice may be directed to be cancelled.

For the reasons stated above it is prayed that order passed by the ITO U/s.143 (3) read with 144B may be directed to be cancelled and consider the return filed by your petitioner and pass such an order as maybe found in accordance with law.

3. Brief facts of the case are that the assessee is a private limited company engaged in the business of travel agency and also as a tour operator. The assessee filed its return of income for the assessment year 2018-19 on 28.06.2018 declaring loss of Rs.1,06,69,074/-.The case was selected for scrutiny under CASS to examine the issue of sales turnover / receipts (turnover shown in ITR is substantially lower in comparison to turnover shown in GSTR 1 & 3B) and business expenses (low income compared to large commission receipts). Subsequently, the AO issued notices u/s.143(2) & 142(1) of the Act along with questionnaire. In response to said notices, the assessee had furnished only the profit & loss account and balance sheet before the AO. After considering the submissions, the AO observed that the assessee has failed to furnish the complete details and evidences from whom commission was earned and supporting documentary evidences for huge business expenses. Therefore, the AO noted that verification of claim of the assessee is not possible and the genuineness of

expenses debited in P&L account remains unsubstantiated and unexamined. Accordingly, the AO completed the assessment proceedings u/s.143(3) r.w.s. 144B of the Act on 03.09.2021 estimating the total income at 8% of total turnover of Rs.5,37,68,840/- amounting to Rs.43,01,507/-. Aggrieved, assessee filed appeal before the CIT(A).

3.1 The Ld.CIT(A) after examining the assessee's submissions noted that to examine the genuineness of claim of expenses, bills and vouchers were necessary, which the assessee had failed to produce before the AO during the assessment proceedings and also before him during the appellate proceedings. Hence, the Ld.CIT(A) dismissed the appeal of assessee stating that there is no infirmity in the order of AO. Aggrieved, the assessee is in appeal before us.

4. The Ld.AR submitted that the assessee is a commission agent of travel business and earning very thin margin profit in commission and after considering the administrative expenses, the company is under loss from past years. Therefore, the assessee could not run the office properly and furnish the entire documents during the assessment proceedings as well as appellate proceedings. The Id. AR stated that the assessee has incurred losses during the

impugned assessment year and also previous and next financial years as detailed below :

A.Y. 2017-18	Loss declared Rs. 16,02,557/-
A.Y. 2018-19	Loss declared Rs.1,06,69,072/-
A.Y. 2019-20	Loss declared Rs. 29,86,310/-

In support of the above, the assessee filed the paper book of 57 pages consisting of Return of income and audit report u/s.44AB of the Act along with financial statements for the year ending 31.03.2018 & 31.03.2019.

4.1 The Id.AR stated that the assessee maintained proper books of accounts which were duly audited by the statutory auditors both under the Companies Act as well as the Income Tax Act. Further, the Id.AR submitted that both the AO as well as the Id.CIT(A) has arbitrarily made the addition by estimating net profit @ 8% of the Commission earned as income from business without appreciating the nature of business and the percentage of profits earned in the respective service sector. Therefore, Id.AR prayed for restricting the estimated profit to 1% of the turnover of commission shown as per the audited financials. Further, the Id.AR submitted that the assessee is eligible for set off of the losses carried forward from the earlier assessment years, wherein the assessee had filed the return

of income within the due dates prescribed under the provisions of section 139(1) of the Act and prayed for allowing the same.

5. Per contra the Id.DR supported the orders of the lower authorities and stated that since the assessee has failed to furnish the supporting evidences for expenditure claimed in the profit and loss account. Therefore, the Id.DR prayed for confirming the order of the Id.CIT(A).

6. We have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the assessee has filed return of income by declaring the net loss of Rs.1.06 Crores for the impugned assessment year by filing the audited financials along with the Tax audit report u/s.44AB of the Act. However, we note that the assessee has failed to submit the evidence in support of the expenditure claimed in the profit and loss account during the assessment and appellate proceedings. Hence, the AO has estimated the profit @ 8% of the Commission income shown in the profit & loss account by rejecting the books of accounts and brought to tax. The same has been confirmed by Ld.CIT(A), since the assessee has only submitted the written submission but not furnished any evidence in support of the expenses claimed.

6.1 We note that the AO and Id.CIT(A) have rejected the books of accounts and estimated the net profit of the business @ 8% of the turnover arbitrarily. Further we find that the assessee had incurred loss in the earlier A.Y. 2017-18 and also next A.Y. 2019-20 apart from incurring the losses during the impugned assessment year. Therefore, to meet the ends of justice and reduce the litigation we consider it appropriate to estimate the profit @ 3% of the turnover of the assessee for the A.Y. 2018-19 by setting aside the order of the Id.CIT(A). In light of the above discussion, we direct the AO to restrict the estimation of profit to 3% of turnover, which works out to Rs.16,13,065/- (Being 3% of Rs.5,37,68,840/-) and recompute the income of the assessee.

6.2 In respect of the ground raised by the assessee for allowing the set off of the carry forward loss of the earlier assessment years, we direct the AO to verify the records, if the assessee has filed the respective assessment year's return of income within the due dates prescribed under the Act and allow the same, if eligible in accordance with law.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 28th March, 2025 at Chennai.

Sd/-
(श्री धुव्वुरुआर.एल रेड्डी,
(DUVVURU RL REDDY)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 28th March, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF