

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.90/RPR/2016
Assessment Year : 2011-12**

Rajkumar Dammani, Shop No.4, Dammani Complex, Main Road, Ramsagar Para, Raipur (CG).	Vs.	ITO, Ward- 1(1), Raipur (CG).
PAN : AFPPD8488M		
(Appellant)		(Respondent)

Assessee by : Shri Sunil Kr. Agrawal, CA.
Ms. Laxmi Sharma, CA
Department by : Shri Sanjay Kumar, DR
Date of hearing : 17-08-2018
Date of pronouncement : 01-10-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 24.02.2016 of the ld. CIT(A)- 1, Raipur (CG) relating to assessment year 2011-12.

2. Grounds of appeal by the assessee read as under :-

“1. On the facts and in the circumstances of the case and in law, that the ld. CIT(A) has erred in treating the ‘undisclosed bank transactions’ as ‘trading transactions of its regular course of business’, while the assessee has actually done the ‘cheque discounting business’ and he has only earned commission income from such undisclosed bank transactions.

2. On the facts and in the circumstances of the case and in law, that the ld. CIT(A) has erred in sustaining the estimated addition made by the ld. A.O. of Rs.87,78,850/- by sustaining the NP rate of 3% of total undisclosed bank transactions, without giving any basis for such arbitrary estimation made by the ld. A.O.

3. *That the assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal.”*

3. At the time of hearing, the ld. counsel for the assessee filed the revised/amended ground of appeal No.1 which reads as under :-

“On the fact and circumstances of the case & in law, the ld. CIT(A) has erred in confirming the action of ld. A.O. of applying profit rate of 3% on the alleged undisclosed bank transactions (i.e. of Rs.29.26 crores) of ‘cheque discounting business’, instead rate of 0.25% (i.e. Rs.2,20,000 on Jila Sahakari Bank a/c) & 0.33% (i.e. Rs.6,70,000 on SBI a/c) as surrendered by the assessee u/s 131 before the ld. A.O. by giving ‘affidavits’ in this respect, more so, both the authorities have not mentioned any legal/admissible basis or any reference for making such arbitrary, wild estimation, hence, Rs.8,90,000 (i.e. 0.30%) may kindly be accepted and Rs.78.88 laksh may kindly be deleted.”

4. Referring to the decision of Hon’ble Apex Court in the case of NTPC Ltd. reported in 229 ITR 383, he submitted that this amended ground should be admitted.

5. After hearing both sides and following the decision of Hon’ble Supreme Court in the case of NTPC Ltd. (supra) the amended ground is admitted.

6. Facts of the case, in brief, are that the assessee is an individual and derives income from trading of food grains and cattle feed under the proprietorship concerns of M/s Mahamaya Industries & M/s Mahamaya Rice Dal & Flour Mill. He filed his return of income on 31.03.2012 declaring total income of Rs.8,47,210/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee on the basis of which the assessee filed various replies. On the basis of enquiries conducted by the Assessing

Officer, information was obtained that the assessee has maintained two bank accounts with Jila Sahkari Bank, Current A/c No.39356 and with State Bank of India, Current A/c No.30483331697 which were not shown in the Balance Sheet of the assessee. The Assessing Officer, therefore, issued summons u/s 131 of the I.T. Act, 1961 and recorded the statement of the assessee wherein the assessee stated that the transactions occurred in these bank accounts are related to the commission income and mistakenly due to the fault of the previous accountant it remained to be disclosed in the Balance Sheet. It was further argued that the transactions related to the said bank account are not part of the sale of the business of the assessee and the assessee only earns commission on these transactions. The assessee also submitted affidavits and replies before the Assessing Officer stating therein that it earns commission income which varies from 0.20% to 0.30% of the transactions appearing in the bank accounts. The Assessing Officer, after considering the submission made by the assessee from time to time, made addition of Rs.87,78,850/- to the total income of the assessee by estimating the net profit @ 3% of such transaction (i.e. Rs.29,26,28,223/-) appearing in the two bank accounts assuming it as unverifiable sales of the assessee.

7. Before the Id. CIT(A), the assessee made elaborate submission challenging the estimation of income @ 3% of such transaction. However, the

ld. CIT(A) rejected such claim and upheld the action of the Assessing Officer by observing as under :-

“2.3 This is a case of unearthing of undisclosed bank account operated by the appellant with account no. CA 39356 with Jilla Sahakari Bank, COD Branch and account no. CA-30483331697 with the State Bank of India, and verifying the transactions carried through these accounts. The appellant claimed that transactions in the said accounts were related to his activities as commission agent and he had offered three percent of the transaction as his income. This claim of the appellant was demolished by the assessing officer as can be seen in Para-2.1 above. The appellant claims that books of accounts of the appellant did not include these two accounts, but the transactions of trading in rice carried out through these bank accounts were genuine which he carried out as commission agent and earned income of Rs.6,70,000/- in FY 2010-11, Rs. 6,31,628/- in FY 2011-12 and Rs.7,17,415/- in FY 2012-13. The assessing officer made enquires u/s 133(6) from the second parties to these transactions and established that the perported transactions never happened. The assessing officer then made enquiries from transport authorities to bring on record the facts that the vehicles perportedly used by the appellant were never used. In many cases vehicles did not at all exists. In other cases the vehicle numbers provided by the appellant were cars and other non transporting vehicles. Many of the vehicle owners have stated that they did not transport any goods as alleged by the appellant. The appellant has claimed that the assessing officer has erred in treating the transaction as appellant's trading activities and taking three percent of total transaction as his income. The appellant claimed that he was mere commission agent, and seller as well as buyers were other parties. He contended that the transactions could not be confirmed in the enquiry of the assessing officer because the transactions were made through brokers. Such a contention has many loopholes. Even if it is presumed that the appellant was a commission agent, he should be able to produce the buyer and seller of each transactions. He even could not produce the brokers through which the sales and purchases were claimed to have been carried out. For this he gave alibi that the commission book was lost and police station was informed on 01/01/2013. It may be noted that the scrutiny notice was issued on 10/09/2012 and the assessment related to FY 2010-11 the appellant claimed to know of these fact much after the close of the financial year, after the return of income was filed and notice of scrutiny was issued. It shows that the story of commission book being lost is an afterthought to dupe the assessing officer. Even if the transaction is carried through brokers there should not be a reason that the vehicle numbers shown for transportation of goods will be bogus. As per the details furnished by him, the vehicles used were open body truck (for eg CG 04 JD3551 and many others), multi exel tailor (For eg CG 04 JC 2955 and many others), 120 car (CG 07 N9477). Many vehicles were not even registered on the date of transactions. All these facts show that the books of accounts cannot be relied upon. Therefore, the addition made by the assessing officer by estimating profit of business is justified which is hereby sustained and the grounds taken by the appellant are rejected.”

8. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

9. The Id. counsel for the assessee, at the outset, submitted that it is a fact that the assessee has not disclosed the two bank accounts mentioned by the Assessing Officer in the assessment order. However, it is also a fact that the assessee has earned only commission income from such transactions. He submitted that the Assessing Officer, in the instant case, has estimated the commission income at 3% which has been upheld by the Id. CIT(A). However, such commission income cannot exceed 0.20%. Referring to the decision of the Mumbai Bench of the Tribunal in the case of M/s. Alembic Securities Pvt. Ltd. vs. DCIT vide ITA No.243 to 245/Mum/2013 order dated 30.09.2016 for assessment years 2006-07, 2010-11 & 2009-10 respectively, he submitted that under identical circumstances the Tribunal upheld the order of the Id. CIT(A) and estimated the profit rate 0.15% as against profit rate of 0.20% adopted by the Assessing Officer.

10. Referring to the decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. M/s. Chaitali Sales Agency Pvt. Ltd. vide ITA No.4908 & 4910/Mum/2016 order dated 17.05.2017 for assessment years 2009-10 & 2011-12 respectively, he submitted that the Tribunal in the said decisions has upheld the order of the Id. CIT(A) in restricting the profit under identical circumstances at 0.15% as against 4% adopted by the Assessing Officer.

11. Referring to the decision of the Ahmedabad Bench of the Tribunal in the case of Shri Rohit Pravindhandra Panwala vs. ACIT vide IT(SS)A No.608 to 612/Ahd/2010 order dated 31.05.2011 for assessment years 2001-02 to 2005-06, he submitted that under identical circumstances, the Tribunal has directed for adoption of 0.125% net profit in cheques/draft discounting.

12. Referring to the decision of the Mumbai Bench of the Tribunal in the case of Gold Star Finvest (P.) Ltd. vs. ITO reported in 57 SOT 409, he submitted that the Tribunal in the said decision has held that where the assessee, a share broker, earned commission on providing accommodation entries to its customers, it was only said commission which could be added to assessee's taxable income and not entire amount representing value of transaction. He submitted that the assessee, in the instant case, has already offered an amount of Rs.8,90,000/- as additional income during the course of assessment proceedings before the Assessing Officer on account of undisclosed bank transaction of Rs.29.26 crores which come to 0.3% of such transaction. Therefore, such income disclosed during the year under consideration being more than the profit determined in such type cases, therefore, the same should be accepted and no further addition is called for. He accordingly submitted that since the assessee has already offered 0.30% on such undisclosed transaction, therefore, no further addition is called for. He accordingly submitted that the order of the Id. CIT(A) be set-aside on this issue.

13. The Id. DR on the other hand heavily relied on the orders of the Assessing Officer and the Id. CIT(A). He submitted that the assessee in the instant case has not disclosed such bank accounts in the Balance Sheet. The Assessing Officer has very reasonably estimated such profit at 3% of the transaction which has been upheld by the Id. CIT(A). He submitted that the order of the Id. CIT(A) is a speaking order and, therefore, the same should be upheld.

14. We have considered the rival arguments made by both the sides and perused the material available on record. We find the assessee in the instant case has not disclosed the two bank accounts in the Balance Sheet and the transactions that has been carried out through these bank accounts amount to Rs.29,26,28,223/-. We find the Assessing Officer rejecting the claim of the assessee that it had received commission income only on cheque/bill discounting which is about 0.20% to 0.30% of the transactions made addition of Rs.87,78,850/- to the total income of the assessee by estimating the profit at 3% on such transaction appearing in the above two undisclosed bank accounts. It may be pertinent to mention here that the assessee before the Assessing Officer had offered 0.30% commission income after deducting certain expenses/commission expenses to sub-brokers and other intermediaries involved in the cheque discounting business which was rejected by the Assessing Officer. We find the Id. CIT(A) upheld the action of the Assessing

Officer, the reasons of which are already reproduced in the preceding paragraph. It is the submission of the Id. counsel for the assessee that in cheque/bill discounting business the profit cannot exceed more than 0.30% and since the assessee has already offered such profit during the course of assessment proceedings, therefore, the same should be accepted and no further addition is called for. It is the submission of the Id. DR under the facts and circumstances of the case the addition made by the Assessing Officer by estimating the profit of 3% which has been upheld by the Id. CIT(A) should be upheld and no further relief should be granted.

15. In the light of the above argument advanced by the assessee and on perusal of the orders of the authorities below, it is an admitted fact that the assessee had not disclosed the transaction reflected in the two bank accounts, the details of which are given in the earlier paragraph and the total transactions of which comes to Rs.29.26 crores. We find the Assessing Officer rejected the offer of 0.30% given by the assessee during the course of assessment proceedings and estimated the income from such undisclosed transaction on account of cheque discounting at 3% of the total transactions. Although, the Id. counsel for the assessee has filed certain decisions to substantiate that the profit element in such type of business varies from 0.15% to 0.25%, however, the fact remains that the assessee himself has offered profit of 0.30% before the Assessing Officer which was rejected by him who estimated such income at 3%.

Therefore, the question is that what percentage should be adopted for such transactions which remain undisclosed to the department in the instant case. The offer by the assessee appears to be too low and profit estimated by the Assessing Officer also appears to be on the higher side if we consider such rate of profit in the light of the various decisions cited before us. Considering the totality of the fact, adoption of 0.5% as net profit on such undisclosed transactions outside the books, in our opinion, will meet the ends of justice. We hold and direct accordingly. The grounds raised by the assessee are accordingly partly allowed.

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

Order pronounced in the open Court on this 01st October, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 01-10-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur