

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No. 29 & 30/BIL/2012)
(Assessment Year: 2007-08 & 2006-07)

Shri Durgesh Pandey L/H of Smt. Girja Pandey L/H of late Shri Markandey Pandey Pro: Bengal Bihar Road Lines, Chandrasekhar Azad Nagar, Bilaspur (C.G.)	V s	Income Tax Officer-1(2) Ayakar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
PAN: AMBPP3026E		
(अपीलार्थी/Appellant)	· ·	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri M.K. Padhi, Adv.
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	14.12.2023
घोषणा की तारीख/ Date of Pronouncement	:	02.01.2024

आदेश / ORDER

Per Arun Khodpia, AM:

The Captioned two appeals are filed by the assessee, subsequently on demise of the assessee, legal heir have been placed on record and the appeals has been taken up through the legal heirs of the assessee, against the common order of Ld. CIT(A), Bilaspur dated 31.03.2011 for the A.Y. 2006-07 and 2007-08.

2. The Grounds of Appeal raised by the assessee have been revised and submitted on 07.12.2023, the same are extracted as under:

GROUNDS OF APPEAL-AY 2006-07**GROUND NO. I**

That the Appellate Order passed by the Learned Assessing Officer(AO) and Ld. CIT(A) are highly unjustified, bad in law , and against the principles of natural justice and not in accordance with the provisions of law.

GROUND No. II

On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has grossly erred in addition of total gross receipt (difference amount as per suppressed receipt and NP assessed by AO) of Rs.4472527/-for the AY **2006-07** without considering the nature of the business transactions of the assessee as a transport booking agent Addition of total gross amount instead of profit amount is highly unjustified, illegal, bad in law , unsustainable, not proper on facts and not in accordance with the provisions of law.

Reliance upon the decisions of the :

Gujarat High Court : Pr. Commissioner Vs Rameshwar Textile Mills Ltd (2015) 3 ITCD 99 .

Gujarat High Court : CIT Vs President Industries(2002)124 Taxman 654

MP High court : Man Mohan Sadani vs CIT (2010)18 Taxman 277

GROUND NO. III

The Ld. AO Bilaspur also failed to appreciate by ignoring the material facts of the business of the deceased assessee related to transportation booking agent, assessment order was passed by adding the NP at the rate of 5% of so called suppressed income of Rs 235396 /- of the AY 2006-07 and on the declared income, which required to be deleted as the profit margin in the form of commission already declared in the said income tax returns of AY 2006-07 .

GROUND No. IV

That the Appellant craves leave to add, amend. alter or delete all or any of the grounds of cross objection at the time of hearing of the appeal.

PRAY :

It is prayed that the Appellate Order passed under section 250 of the Income Tax Act, 1961 ("the Act") may please be cancelled/set-aside on this ground alone and reinstate the Ld. AO Order with proper adjustment as per Ground No III above .

In view of all the facts and circumstances , herewith prayed to hear the appeal on merits and may please be allowed and justice rendered to legal heir of the assessee.

GROUND OF APPEAL-AY 2007-08**GROUND No. I**

That the Appellate Order passed by the Learned Assessing Officer(AO) and Ld. CIT(A) are highly unjustified, bad in law, and against the principles of natural justice and not in accordance with the provisions of law.

GROUND No. II

On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has grossly erred in addition of total gross receipt (difference amount as per suppressed receipt and NP assessed by AO) of Rs.6741826/- for the AY **2007-08** without considering the nature of the business transactions of the assessee as a transport booking agent. Addition of total gross amount instead of profit amount is highly unjustified, illegal, bad in law , unsustainable, not proper on facts and not in accordance with the provisions of law.

Reliance upon the decisions of the :

Gujarat High Court : Pr. Commissioner Vs Rameshwar Textile Mills Ltd (2015) 3 ITCD 99.

Gujarat High Court : CIT Vs President Industries(2002)124 Taxman 654

MP High Court : Man Mohan Sadani vs CIT (2010)18 Taxman 277

GROUND No. III

The Ld.AO Bilaspur also failed to appreciate by ignoring the material facts of the business of the deceased assessee related to transportation booking agent, assessment order was passed by adding the NP at the rate of 5% of so called suppressed income of Rs 354833/-of the AY **2007-08** and on the declared income , which required to be deleted as the profit margin in the form of commission already declared in the said income tax returns of AY 2007-08 .

GROUND No. IV

That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of cross objection at the time of hearing of the appeal.

PRAY :

It is prayed that the Appellate Order passed under section 250 of the Income Tax Act, 1961 ("the Act") may please be cancelled/set-aside on this ground alone and reinstate the Ld. AO Order with proper adjustment as per Ground No III above .

In view of all the facts and circumstances, herewith prayed to hear the appeal on merits and may please be allowed and justice rendered to legal heir of the deceased assessee .

3. At the outset, when the aforesaid cases were called for hearing, it is pointed out by the registry that the appeals filed by the assessee are barred by limitations by 207 days. When Ld. AR of the assessee was confronted to explain the reasons for delay. It is submitted that when the order was served to the assessee. The assessee was suffering from cancer, who could not survive and subsequently was expired on 08.02.2014. Later on, wife of the assessee Smt. Girja Pandey, who has become the legal heir of the deceased assessee and placed on the records for the aforesaid appeals, was also expired on 14.06.2021, therefore, Shri Durgesh Pandey son of the assessee has been placed as legal heir for the present appeals. Under such Facts and Circumstances, it is prayed that the delay in filing of appeal may please be condoned which was occurred on account of reasons beyond control of the assessee. On perusal of the facts of the present case, since the deceased assessee was suffering from cancer and due to his illness, the appeals were filed belatedly, which in our considered opinion is a sufficient cause for filing the appeal after the prescribed time limit, we thus, direct to condone the delay and allow the appeals to be admitted. The present appeals are therefore, taken up for hearing.

4. Since the Grounds of Appeal involved in the aforesaid appeals are identical, interconnected and interwoven, therefore, for the sake of convenience and brevity, we find it appropriate to disposed-off the aforesaid two appeals by this common order.

5. Appeal No. 30/BIL/2012 has been taken as the lead case.

6. The Brief facts of the case are that the assessee which was individual has filed his return of income for the AY 2006-07 on 06.12.2006, declaring total income of Rs. 1,45,847/-. Subsequently, the case of the assessee was selected for the scrutiny after obtaining necessary approval. It is observed by the Ld. AO that the assessee has derived income from Transport contract receipt and commission receipts. During the course of assessment proceedings. On perusal of the return of income of the assessee, Ld. AO has observed that a number of TDS certificate in form 16A were issued in the name of the assessee in which date of payment/credit, amount paid/credited, and amount of income tax deducted are shown. The assessee has, in turn, claimed tax deducted at source in his return of income which ultimately resulted into a refund. But he has not shown the amount paid/credited as his gross receipts. The assessee was asked to explain reasons, why these receipts have not been shown by him and his books of account were not got audited as per the provisions of 44AB of the IT Act. In response, it is submitted by the

assessee that he is proprietor of Bihar Bangal Road lines, he is engaged in the business of transport commission, the assessee does not own any truck. Assessee engages truck for customers as and when required and in turn gets commission from truck owners ranging from Rs. 200/- to 250/- per truck depending upon the market conditions. The assessee carries transportation job. There are two types of freight payment.

(i) to be billed

(ii) to pay.

In the first situation, freight is paid by the assessee and raise the bill for the payment of freight. In the second situation, assessee engages a truck for transportation of material and sets commission for truck arrangement. This commission is received from the truck drivers. The freight amount is paid by the opponent party. In the second situation, neither freight is paid by the assessee nor receipt the amount except the commission received from the truck drivers. Accordingly, the turnover shown in the TDS certificate was never received by the assessee from the parties, but payment has been directly made to the drivers of truck owners by the parties and as per the legal obligation, party has deducted TDS from the Assessee's deposit account. Explanations of the assessee were not found satisfactory by the Ld. AO, finally Ld. AO has estimated income of the assessee @5% on Rs.47,07,923/- on all such receipts and had made the addition of Rs. 2,35,396/- to the returned income of the assessee for the AY 2006-07.

7. Aggrieved by the aforesaid order of the Ld. AO, assessee preferred an appeal before the Ld. CIT(A) and had submitted his contentions and written submissions before the Ld. CIT(A), wherein Ld. CIT(A) has examined the issue and have decided the same on different footings. While considering the issue Ld. CIT(A) have observed that the receipts now shown by the assessee in his ITR should not be subject to estimate of profit on the same on a certain percentage, according to Ld. CIT(A), the assessee has suppressed the receipts which should have been shown as income in his ITR and, therefore, such suppressed receipts should have been added to the return income of the assessee. Ld. CIT(A) exercised her powers inherently vested which are co-terminus with the Ld. AO u/s 251(1)(a) of the IT Act. She has proposed to enhance the income of the assessee. In the result, appeal of the assessee for both the years have been dismissed with enhancement in the income of the assessee to the extent of Rs. 44,72,527/- for AY 2006-07 and Rs. 67,41,826 for the AY 2007-08. The relevant observations of the Ld. CIT(A) making enhancement on the assessed income are extracted as under:

1.3 *I have carefully considered the submissions made on behalf of the appellant with reference to the facts obtaining from the record. The main emphasis of the submissions made on behalf of the appellant, was that the gross receipts/gross sales could not be assessed as income and only NP on such suppressed receipts, should be applied and assessed. The decisions, relied upon in support of this argument, have been gone through. With due respects to the authorities cited, the facts in the case of the assessee, under consideration, are entirely different and distinguishable from those obtaining from the decisions relied upon, in as much as, in those cases, on the basis of*

inventories prepared on ad hoc basis by the survey team, the suppression in sales was projected and since the assessee must have incurred some expenditure towards cost and other incidentals, such as direct and indirect expenses, it was concluded that, in such circumstances, reasonableness will be only to assess the NP on such suppressed sales. While in the case of the assessee, under consideration, the impugned difference was found between the receipts as shown and as per TDS certificates. The receipts as per TDS certificates were much more than the receipts shown by the appellant. The impugned suppression in receipts was as a result of this. It is only after execution of the works, that the payment was made by the payer and for execution of such works, the expenditure incurred must have already been accounted for and claimed, without which neither the works could be completed by the appellant nor the payments, which were subjected to TDS, could be made by the payer, forming part of the TDS certificates. In such circumstances, since the appellant already deemed to have claimed such expenditure incurred for earning the said receipts, which were subjected to TDS, it will be incorrect and superfluous to allow such expenditure which was deemed to have been claimed and allowed. Hence it was not the NP that was suppressed but it was the quantum of receipts which were suppressed, that have to be brought to tax. This is more so because the appellant incurred expenditure and earned the receipts covered by the TDS certificates but had deliberately suppressed the same in the return, only to avoid and evade tax liability. In such circumstances, the entire suppressed receipts have to be assessed as undisclosed income of the appellant for the two years, under

Consideration, and viewed in the above perspective, the proposed enhancement for bringing to tax, such suppressed income, is correct on facts and in law.

1.4 *Mere theoretical explanation of the nature of the case, in my considered view, was not suffice. When specifically confronted, to explain the aforementioned suppression in receipts, it was incumbent upon the appellant to make a proper reconciliation of the amount of the difference between the receipts as per TDS certificates and that as per profit and loss account. Despite giving ample opportunities, neither before the AO nor in proceedings before me, the appellant had adduced any evidence to reconcile the aforementioned difference in receipts. There was a factual finding given by the AO that there was, difference between the receipts in TDS certificates and amount credited in P&L A/c, Further, if the P&L A/c was taken into consideration, there was a*

distorted picture of the true state of the financial affair or business operation of the appellant, because the gross receipts, as aforementioned, were not transferred to P&L A/c. but only the meagre commission alleged have been received, was shown in P&L A/c. In view of the above, I am of the considered view that there was a failure on the part of the appellant to disclose fully and truly all material facts necessary for the assessment. The disclosure by the appellant, for avoiding assessment, must not only the true but it should also be fully explained. Fact that the AO could have investigated the truth of the assertion, in my considered view, did not relieve the appellant of his obligation. Considering the Present case on the prism of aforesaid, it was found that no explanation as to reconciliation of the difference between the receipts in TDS certificates and amount credited in P&L A/c., had been provided by the appellant. Hence, the assertion of the appellant that all materials were already disclosed, was not tenable and acceptable in the background of this precedent. An almost alike situation came up for consideration before the Madras HC in WCI (Mad.) (P.) Ltd. v ACIT (2010) 229 CTR (Mad.) 275 wherein that assessee having not explained and reconciled the difference between the receipts shown in the TDS certificates and amount credited in the P&L A/c., it was held by the Madras HC that there was no disclosure of relevant material facts and hence reopening of assessments u/s. 147, was held valid. As already stated, suppression in receipts, as aforementioned, was clearly assessable as undisclosed income for the two assessments years, under consideration, in view of the unambiguous and categorical finding given by the Jurisdictional HC of Chhattisgarh in M/s.- Pest-O-Kill (supra). Needless to mention that the decision of the Jurisdictional HC is binding on all the persons/authorities coming within the jurisdiction of the HC. To reiterate at the risk of repetition, except rendering theoretical assertions, no evidence whatsoever was adduced by the appellant, to reconcile the aforementioned detection of suppression in receipts and to substantiate the correctness of the returns filed.

1.5. For the reasons aforementioned, the income determined by the AO is enhanced by Rs.44,72,527/- for the AY 2006-07 and by Rs.67,41,826/- for the AY 2007-08. Since this is a clear-cut case of deliberate suppression in Receipts which resulted in assessment of the concealed income to the extent mentioned above, for the failure on the part of the appellant to disclose fully and truly all material facts, the AO is directed to initiate penalty proceedings as per provisions of law. This should be done while giving effect to this order.

8. To challenge the aforesaid decision, enhancing the assessed income of the assessee by the Ld. CIT(A), the assessee is before us with the present appeals.

9. Before us Ld. AR on behalf of the assessee has submitted that the decision of Ld. CIT(A) was grossly on error without considering the nature of the business transaction of the assessee, who was merely a transport booking agent having no owned trucks or transport vehicles to ply them for transportation. It is the submissions of Ld. AR that addition of gross amount instead of profit is highly unjustified, illegal, bad in law, unsustainable, not proper on facts and not in accordance with the provisions of law. Ld. AR placed his reliance on the following judgments:

Gujarat High Court : Pr. Commissioner Vs Rameshwar Textile Mills Ltd (2015) 3 ITCD 99.

Gujarat High Court : CIT Vs President Industries(2002)124 Taxman 654

MP High Court : Man Mohan Sadani vs CIT (2010)18 Taxman 277

10. Carrying the arguments further Ld. AR on behalf of the assessee has submitted that Ld. AO also failed to appreciate by ignoring the material facts of the business of the assessee, who was just a transportation booking agent. The estimation of profit on the so-called suppressed receipts was excessive as the commission earned was already declared by the assessee as his income and no further addition was called for.

11. Ld. SR DR on the other hand vehemently supported the order of Ld. CIT(A) and has requested to uphold the same.

12. We have considered the rival submissions, perused the material available on record and case laws pressed into in support of the contentions raised by the assessee. On careful reading of the orders of revenue authorities and explanations furnished by the assessee before them, it is observed that before Ld. AO as well as before Ld. CIT(A), the assessee was failed in submitting necessary evidences to support the contention raised that the assessee was only a transport agent working for commission and the income earned as commission was already offered by him as assessable income in his ITR. The assessee has tried to convince both the revenue authorities by pressing reliance on judicial pronouncements and has attempted to impress upon them on the basis of theoretical explanations. It is observed by the Ld. CIT(A) that when the assessee was specifically confronted to explain about the suppression of receipts, no satisfactory explanations have been offered neither any supporting evidence like transportation account, commission receipts account, capital account and balance sheet etc., were submitted. On perusal of order of Ld. AO, who had estimated the net profit @5% of gross receipts without any basis, also Ld. CIT(A) had enhanced and considered the total receipts as undisclosed income, knowing the fact that the assessee has not maintained regular books of

accounts. In the present case as mentioned by the Ld. AR, the assessee was suffering with cancer and therefore, could not produce the required factual detail before the revenue authorities below, the case of the assessee was requested to be restored back to the files of AO for *denovo* assessment. Under such facts and circumstances, since the actual facts of the issue were not available before the revenue authorities, the decisions taken by the revenue authorities were based on their own assumptions, though the assessee was also non-compliant and negligent in offering the proper response before the authorities, however, in the interest of substantial justice and as requested by the assessee which was not opposed by the revenue, we are of the considered opinion that the present appeal for the want of factual verifications based on which the application of legal jurisprudence can be applied, should be restored back to the files of Ld. AO for fresh adjudication. Reasonable opportunity of being heard and to produce all the necessary information/ evidence shall be provided to the assessee. The assessee is also directed to pro-actively assist, submit, and comply with during the *denovo* assessment proceedings, failing which the revenue authorities are at liberty to decide the issue following the provisions of extant law. In the result, ITA 30/BIL/2012 for the AY 2006-07 of the assessee is partly allowed for statistical purposes.

13. Since, we have restored ITA no. 30/BIL/2012 for the AY 2006-07 to the files of AO for adjudication afresh, having identical facts except

amount involved in the issue, our aforesaid decision shall be *mutatis mutandis* apply on the appeal of the assessee in ITA no. 29/BIL/2012 for the AY 2007-08, also. Accordingly, the same is partly allowed for statistical purposes.

14. In combined result, both the aforesaid appeals are partly allowed for statistical purposes.

Order pronounced in the open court on 02/01/2024.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 02/01/2024

Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur