

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 1601/CHNY/2023**
निर्धारण वर्ष /Assessment Year:2018-2019

Shri. Palanisamy Senthilkumar,
73/1, Selvakumar Rice Mill,
Mangalam Road,
Andipalayam,
Tirupur 641 687.

The Income Tax Officer,
vs. Ward 2(1)
Tirupur 641 601.

[PAN: BWUPS 6975B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms. J. Vamini, Advocate
: Mr. D. Hema Bhupal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 04.03.2024.

घोषणा की तारीख/Date of Pronouncement : 06.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1054384098 (1) dated 15.07.2023. The assessment was framed by the Additional/Joint/Deputy/Assistant Commissioner of Income

Tax/ Income-tax Officer, National e-Assessment Centre, Delhi u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment year 2018-19 vide order dated 03.04.2021.

2. The only issue in this appeal of assessee is as regard to order of Id. Commissioner of Income (Appeals) (in short 'Id. CIT(A)') sustaining/restricting the addition at Rs.73,99,559/- as against addition made by the Id. Assessing Officer at Rs.2,42,58,153/- in regard to disallowance of expenditure being payment of commission and brokerage made to contractors u/s.69C of the Act being unexplained expenditure.

3. The brief facts of the case are that assessee is an individual carrying on the business as a trader in wearing apparels. Assessee filed his return of income and assessee's case was selected for scrutiny assessment. The assessment was completed determining total income of Rs.3,88,49,580/- as against returned income of Rs.13,37,010/-. The only addition before us now is restricting the addition at Rs. 79,99,559/- being payment made to contractors reflected in the audited report amounting to Rs.2,19,38,339/-. The Id. Assessing Officer issued notices to explain the source of commission and brokerage paid amounting Rs.2,19,38,339/- and explain the source of payments made to contractors amounting to Rs.23,19,814/-. According to the Id. Assessing Officer expenditure are reflected in the audited report and

claimed to have made for the purpose of business. As there was no satisfactory reply or explanation with the evidences, the Id. Assessing Officer added both the amounts claimed to the returned income of the assessee and assessed accordingly. For this, the Id. Assessing Officer recorded the reasons as under:-

'The assessee has acknowledged that total 8 notices were served in the letter physically served by NeAC and was duly signed by his Manager Shri Varun, however the assessee has not responded even after serving the letter in person. A show cause notice was issued on 30.03.2021, the assessee has not submitted any response. In view of the above, the total expenses of commission and payment to contractors, total amounting to Rs.2,42,58,153/- (Rs.2,19,38,339/- + Rs.23,19,814/-) is added back to income of assessee''.

Aggrieved, assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals).

4. The Id. CIT(A) partly deleted the addition and restricted the addition at Rs.79,99,559/- by observing in his order at para 7.21 (c) as under:-

'(c) The addition made under Section 68 is modified and brought down from Rs.2,42,58,153/- to Rs.73,99,559/- (Rs.2,19,83,339/- (-) Rs.1,45,83,780/-) and this addition is confirmed in the interest of justice which represents the difference between the amount charged to the profit and loss account and the extent of expenditure incurred by the Appellant and certified by the tax auditor in his report under section 44B of the Act''.

Aggrieved, assessee preferred an appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Ld. Counsel for the assessee argued that the amount of Rs.1,45,83,780/- being expenditure chargeable to profit and loss account on account of shipping and commission charges, which relates to Tiruppur Rs.1,32,54,412/-, Telengana Rs.10,24,566/-, Maharastra Rs.1,97,382/- and assessee also gave details of payments made to contractors for Amazon Rs.3,00,342/- and Flipkart Rs.20,19,472/- thereby amounting to Rs.23,19,814/-. Ld. Counsel for the assessee stated that the details of TDS made u/s.194H of the Act for commission is as under:-

M/s. Amazon	Rs.1,23,80,012/-
Flipkart	Rs.27,68,952/-
Clues	Rs.50,902/-
Jasper	Rs.39,827/-
PayTM	Rs.38,840/-
Total	Rs.1,52,78,539/-.

It was explained by the Ld. Counsel for the assessee that these tallies with the disclosure made in form 3CB but due to typographical error in form 3CD in para 34(a) in S.No.2 in the said amount, the total commission or brokerage expenses for financial year 2017-2018 has been disclosed at Rs.2,19,38,339/- which is incorrect figure and which incorrectly entered due to

typographical error. It was certified by the Chartered Accountant vide certificate dated 14.02.2024 and the relevant certificate reads as under:-

'CLARIFICATION REGARDING DETAILS MENTIONED IN FORM 3CD FOR AY 2018-19

We hereby state that We issued a Tax Audit Report dated 25.10.2018 in Form 3CB for AY 2018- 19 in the case of Mr. Palanisamy Senthilkumar (Asspee Group).

We hereby state that there is a typographical error in Form 3CD annexed to the aforesaid Tax Audit Report.

In Para 34(a) in S.No. 2 of the said Form 3CD, the total amount of Commission or Brokerage expenses for AY 2018-19 has been disclosed as Rs. 2,19,38,339/-. This figure is incorrect and has been incorrectly entered due to a typographical error.

We hereby certify that the actual amount of Commission or Brokerage expenses incurred for AY 2018-19 by the assessee is Rs. 1,45,83,780/-. The same has been reported in the Profit and Loss account which has also been certified by us.

We humbly request that this clarification be taken on record in the ongoing proceedings in the case of the assessee".

We have also gone through compilation filed by the assessee from 1 to 46 pages which consist of profit and loss account, form No.3CB, Income Tax Return for assessment year 2018-19 etc., This clearly reflects that this amount entered in form 3CB of Rs.2,1938,339/- is wrongly entered and the correct figure is Rs.1,45,83,780/-. The Id. Senior Departmental Representative only stated that the certificate issued by the Chartered Accountant clarifying typographical error can be verified by the Id. Assessing Officer and requested that the matter be resorted back to the file of the Id. Assessing Officer for

limited verification. We noted that these details were available before the Id. CIT(A) at the time of hearing and complete details which are available is only supportive of the order of the Id. CIT(A). Hence, we find that the Id. CIT(A) erred in restricting the addition at Rs.79,99,559/- because the expenditure claimed to have incurred on which the tax is collected is Rs.2,19,38,339/- is wrongly entered in form 3CD and it should have been Rs.1,45,83,780/-. Hence, we delete the addition and allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee in ITA No.1601/Chny/2023 for assessment year 2018-2019 is allowed.

Order pronounced on the open court on 6th day of March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 6th March, 2024

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

