

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER**

**ITA No. 273/Agra/2013
Asst. year : 2008-09**

Income-tax Officer,
3(3), Mathura.

vs.

Shri Rajeev Kumar Gupta,
27, Krishna Puri, Mathura.
(PAN:AFMPG 9044 B)

(Appellant)

(Respondent)

Appellant by : Shri Athesham Ansari, Jr. D.R.
Respondent by : Shri Sahib P. Satsangee, C.A.

Date of hearing : 12.02.2014
Date of pronouncement : 14.02.2014

ORDER

Per Bhavnesh Saini, J.M.:

This appeal by the Revenue is directed against the order of Id. CIT(A)-I, Agra dated 06.03.2013 for the assessment year 2008-09 on the following grounds :

“1. That the Ld. CIT (A)-1, Agra has erred in Law and on facts in giving relief of Rs.10,33,705/- out of addition of Rs.11,76,457/- by admitting and entertaining new evidence of P%L account produced during appellate proceedings in which gross receipts of Rs.18,40,000/- has been shown which is nothing but after thought to cover up the undisclosed deposits of Rs.11,76,457/-.

2. That the Ld. CIT (A)-1, Agra has erred in Law and on facts by accepting the gross receipts Rs.18,40,000/- shown in new evidence ignoring the fact that assessee showed gross receipts of Rs.8,40,000/- at column 51(a) of page 5 of the return of income.

3. That the Ld. CIT (A)-1, Agra has erred in Law and on facts by accepting another source of income in form of commission from

transport because in the return of income assessee offers only source of income i.e. from transportation.”

2. We have heard the ld. representatives of both the parties and perused the findings of authorities below and the material on record.

3. The facts noted in the impugned order are that in this case , the assessment order under appeal has been passed u/s.144 vide order dated 20.12.2010, determining the assessed income at Rs.12,96,457/- as against the returned income of Rs.1,20,000/-. During the course of assessment proceeding, the AO found that there was a cash deposit of Rs.11,76,457/- in the bank account of the assessee maintained with ICICI Bank. The AO has mentioned in the assessment order that the assessee has shown a transportation code no.0712, but no income has been shown by him from running of trucks and any other vehicles in the return of income. With regard to the cash deposit in the bank account, the AO has tried to collect information from the assessee by sending various notices but no reply has been received from him. He has also mentioned that he contacted the counsel of the assessee, Shri Abhishek Kumar Garg, CA but he has also informed that from the last one month, the assessee did not contact him and therefore, he did not have any document relating to the assessee. Therefore, the AO has finally completed the assessment order u/s.144 of the Act. In the assessment order, the AO has discussed that in the bank account of the assessee maintained with ICICI Bank, having

account no.027401503816, he has deposited Rs.11,76,457/- in cash and there is a payment to ICICI Bank Ltd., HDFC, Mangalam, Citi Financial, Indiabull and Centurian etc. As per details discussed by the AO in the assessment order there are deposits as well as withdrawals in this bank account. However, in absence of any explanation filed by the assessee, he has considered the entire amount of deposit of Rs.11,76,457/- as unexplained cash deposit and made the addition for the entire amount of the cash deposits in the income of the assessee and thus, the total assessed income of the assessee has been determined at Rs.12,96,457/-.”

4. The assessee challenged the addition before the Id. CIT(A) and the submissions of the assessee are reproduced in the appellate order, in which the assessee explained that the details could not be filed of source of cash deposited in the bank account on account of shifting of the residence. The assessee is carrying on the business of transportation and filed return of income declaring income of Rs.1,20,000/- and the source of the cash deposited in the bank account was out of receipts from transportation business. The cash deposit in the bank account was out of realization of transportation charges duly recorded in the cash book. The assessee, therefore, pleaded that the additional evidence may be admitted u/r 46A. The submissions of the assessee were forwarded to the AO for filing of remand report in which the AO objected to the admission of additional evidence. The same is reproduced in the appellate order. The Id. CIT(A) finding that no reasons have

been explained for non-production of additional evidences before the AO, rejected the request of assessee for admission of additional evidences u/r. 46A. The assessee, therefore, explained the cash deposited in the bank account from transport business. It was also pleaded that the AO has not brought any evidence on record to show any other source of income other than running of trucks/vehicles. Therefore, the cash deposit in the bank account is out of transport business and according to section 44AE, no books of account is required to be maintained for such business. The Id. CIT(A) considering the explanation of the assessee and going through the entries in the bank account, accepted the contention of the assessee that bank deposits are from transportation business. Therefore, substantial addition was deleted. However, its gross receipts were estimated and by applying higher profit rate, part addition was maintained. The findings of the Id. CIT(A) in para 5.5 and 5.6 of the appellate order are reproduced as under :

“5.5 I have considered the argument taken by the Id. AR in this regard. The AO in the assessment order, has mentioned that the assessee (appellant) has transportation code no.0712 but in the return of income, no details were given by the assessee (appellant) about running of trucks or any other vehicle. In the appeal proceeding, the Id. AR has claimed about income of Rs.1,20,000/- shown by the assessee as being on account of running of two tankers which was purchased by the assessee (appellant) after obtaining finance. In support of showing income of Rs.1,20,000/- declared in the return of income, a profit & loss account has been filed in which, gross receipt has been shown at Rs.18,40,000/- on which, a net profit of Rs.1,20,000/- has been shown to have been earned by the assessee (appellant). But this profit & loss account was not filed at the time of filing of return. Though the Id. AR has claimed that no books are required to be maintained by the assessee (appellant) in view of the

section 44AE but the income shown by the assessee (appellant) during the year under consideration, has not been calculated as per section 44AE because full details of the trucks and other vehicles owned by the assessee (appellant) have not been given and computation of income as per provision of section 44AE has not been furnished. After discussion with the Id. AR and taking into account the totality of facts of the case, it has been found that though the assessee (appellant) is owner of two tankers, he is also earning income by way of running of vehicle on commission basis and, therefore, a profit & loss account has been prepared to compute his income instead of computing the income on the basis of section 44AE for two tankers owned by him. Therefore, it would not be logical to accept that the income of the assessee (appellant) is to be calculated as per section 44AE because even the Id. AR, while making submission during the appeal has not made the computation of the income of the assessee (appellant) as per section 44AE. The profit & loss account furnished by the Id. AR during appeal proceeding has been found to be as not admissible as per rule 46A because the same was not filed during the course of assessment proceeding. It has also been found that the assessee (appellant) is not maintaining complete set of regular books of account which the Id. AR himself has admitted that as per section 44AE, he is not required to maintain regular books of account and even while filing the return of income, the assessee (appellant) has not filled up all the columns which are required to be filled up on the basis of books of account maintained and income is declared in column no 51 of Part A - P&L relating to "No Account case". Therefore, it is undisputedly clear that the assessee (appellant) is not maintained complete set of books of account.

5.6 Considering the facts and circumstances of the case as discussed above, the correct amount of the profit of the assessee (appellant) cannot be worked out on the basis of the profit and loss account filed during the appeal proceeding. However, looking to the nature of entries of cash deposits and withdrawals, found in the bank account of the assessee (appellant) maintained with ICICI Bank, it cannot be said that the entire amount of the deposits made in this bank account is unexplained because after deposit of cash amounts, there are withdrawals and since the assessee (appellant) is in the business of transport, source of such deposits being from his transport business can also be not brushed aside. The total amount of deposit of cash in this bank account has been computed by the AO at

Rs.11,76,457/-. As against this total amount of cash deposits in the bank account, the Id. AR has shown the gross receipts of Rs.18,40,000/- in the profit & loss account furnished during the appeal proceeding. He has also pleaded during the appeal proceeding that despite the rejection of cash book of the assessee (appellant) as not being admitted in view of rule 46A, that was produced during appeal proceeding, the cash deposits in the bank account may be treated as explained out of the receipts of assessee (appellant) from his transport business. Since, the gross receipts shown in the profit & loss account produced by the Ld. AR during the appeal proceeding being much more than the cash deposits made in the bank account, it is accepted by me that Rs.11,76,457/- deposited in the bank account of the assessee (appellant) is out of total gross receipts of Rs.18,40,000/- shown in the profit & loss account. However, from the gross receipts of Rs.18,40,000/-, the assessee (appellant) has shown a profit of Rs.1,20,000/- which comes to be at profit rate of 6.5%. As the assessee (appellant) has not maintained the regular books of account and his income is also not being computed as per provision of section 44AE from the two tankers owned by him because he was running other vehicles also on commission basis, which were not owned by him, his income is to be estimated based on the information available on record and also taking into account the information provided during the appeal. As per the information disclosed in the return of income filed by the appellant, he has shown total gross receipts at Rs.8,40,000/- and after deduction expenses of Rs.7,20,000/-, he has shown a net profit of Rs.1,20,000/-. This information disclosed in the return of income gives the average rate of earning of commission income by the assessee from transport business at 14.28%. After considering the cash deposits made in the bank accounts and the total amount of gross receipts disclosed during the appeal proceeding at Rs.18,40,000/- in the P & L account filed by the Ld. AR, it has been found that the assessee (appellant) has suppressed the amount of gross receipts declared in the return of income. Despite showing the correct amount of gross receipts after taking into account the cash deposits in the bank account, while preparing the P & L account filed during the appeal, the Ld. AR has shown the same amount of income as it was declared in the return of income at Rs.1,20,000/- and thus, now in the details filed during appeal, the average rate of earning of commission has been suppressed showing it at 6.5% instead of 14.28% declared in the return. As this P & L account was not filed during the assessment proceeding, it has already been rejected for

admission as per Rule 46A(1). However, since the gross receipts declared in this P & L account has been found to be a reasonable amount with which, the cash deposits made in the bank account can be explained, I have taken gross receipts of the assessee at Rs.18,40,000/- for the purpose of estimation of his income. The average rate of earning of commission is taken at 14.28% as declared in the return of income.

Therefore, I hold that the income of the assessee (appellant) should be computed @ 14.28% of Rs.18,40,000/- which comes to Rs.2,62,752/- and hence, income of the assessee (appellant) should be assessed at Rs.2,62,752/- instead of Rs.1,20,000/- shown by him and accordingly, an amount of Rs.1,42,752/- shall be added in his income instead of Rs.11,76,457/- added by the AO in the assessment order, therefore, the assessee (appellant) gets a relief of Rs.10,33,705/- and accordingly ground No. 3 & 4 are partly allowed.

5. On consideration of the rival submissions, we do not find any merit in the departmental appeal. The Id. counsel for the assessee admitted that the assessee did not challenge part addition maintained by the Id. CIT(A) on account of estimation of income by applying higher profit rate. The Id. DR submitted that despite the Id. CIT(A) did not accept the additional evidences, he has granted relief to the assessee without any reasons. He has, however, stated that there are deposits as well as withdrawals in the bank account in question. On going through the findings of Id. CIT(A) and material on record, it is clear that the Id. CIT(A) correctly found that the assessee is owner of two tankers. Copies of registration certificates are filed in the paper book and the assessee is earning income by way of running of vehicles on commission basis. The Id. CIT(A) on looking to the nature of entries of

cash deposits and withdrawals found in the bank account of the assessee maintained with ICICI bank held that the entire amount of deposit made in the bank account cannot be said to be unexplained because after deposit of the cash amounts, there are withdrawals. Since the assessee is in the business of transportation, the explanation of the assessee could not be refused that such deposits have been made out of transport business income. The Id. CIT(A) in the absence of any material on record taken the gross receipts of Rs.18,40,000/- which are more than the deposits made in the bank account. The assessee in the income statement (PB-6) filed with the return of income specifically mentioned earning of Rs.1,20,000/- being income from transportation business and at the end of the page, total receipts are mentioned at Rs. 8,40,000/-, expenses Rs.7,20,000/- and net profit Rs.1,20,000/-. It would, therefore, give the detail that the total receipts of the assessee were in a sum of Rs.16,80,000/-. The Id. CIT(A) taken the gross receipts more than declared by the assessee in the return of income and even the AO has admitted in the assessment order that there are deposits as well as withdrawals in the bank account of the assessee. In the absence of any other source of income, the Id. CIT(A) was justified in holding that the entire amount of deposit in the bank account could not be treated as unexplained. The cash deposit was, therefore, correctly found to be explained out of receipts of the assessee from transport business. Other finding of the Id. CIT(A) estimating income by applying higher profit rate is not under challenge before us in the departmental appeal and even

there is no cross appeal filed by the assessee. We may further note that on both the main grounds of appeal, the department felt aggrieved against the order of Id. CIT(A) in reducing the addition by admitting the new evidence, which itself is factually incorrect because the Id. CIT(A) did not admit any new evidence. The Id. CIT(A) considered the bank account of the assessee and the registration certificates and computation of income filed with the return of income for the purpose of passing the appellate order. Therefore, there is nothing illegality in his order in reducing the addition. In view of the above discussion, we do not find any merit in the departmental appeal. The same is accordingly dismissed.

6. In the result, the departmental appeal is dismissed.

Order pronounced in the open court.

Sd/-
(PRAMOD KUMAR)
Accountant Member

Sd/-
(BHAVNESH SAINI)
Judicial Member

*aks/-

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. CIT(A), concerned
4. CIT, concerned
5. DR, ITAT, Agra
6. Guard file

By order

Sr. Private Secretary

True copy