

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 1215/Hyd/2012
Assessment Year: 2009-10

Asst. Commissioner of Income-tax,
Circle – 9(1), Hyderabad

vs. Shri Pramod Kumar Kesri,
Hyderabad.

PAN – AGYPK 2685D

Appellant

Respondent

Revenue by: Shri K. Ravi Kiran
Assessee by: Shri S. Rama Rao

Date of hearing: 12/09/2018
Date of pronouncement: 10/10/2018

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal is filed by the Revenue against order of CIT(A) - VI, Hyderabad, dated 25/05/2012 for AY 2009-10.

2. Brief facts of the case are that the assessee is a proprietor of two concerns, namely, M/s New Mahendra Roadways, which is a tax audit case and M/s Maatho Shri Road lines. He filed the original return of income for the AY 2009-10 on 30/09/2009 declaring a total income of Rs. 39,79,950/- and revised return of income on 19/05/2010, declaring income of Rs. 41,80,560/-. The AO completed the assessment u/s 144 r.w.s. 145(3) by making the following additions:

1. Estimating the income at Rs. 1,01,73,579/- at 5% of gross receipts of Rs. 20,34,71,576/- as the assessee failed to produce the books of account/bills etc.
2. Addition u/s 68 of Rs. 83,20,000/-

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the additions made by the AO.

4. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

1. The order of the learned CIT(A) is erroneous in law and on facts.

2. Learned CIT(A) erred in not upholding the action of the Assessing Officer rejecting the Books of Accounts ignoring the facts brought on record by the A.O. for such rejection of Books of Accounts.

3. Learned CIT(A) erred in not upholding the estimation of Income @5% of gross turnover disregarding the facts brought on record by the Assessing Officer particularly that no proper evidence was made available for the expenses incurred.

4. Learned CIT(A) erred in deleting the addition of Rs.83,20,000/- made under section 68 of the Income-tax Act, 1961, without appreciating the facts brought on record.

5. Any other ground that may be urged at the time of hearing."

5. Ground Nos 1 & 5 are general in nature, hence, need no adjudication.

6. As regards ground Nos. 2 & 3 are, the Assessing Officer has noted that proper bills/vouchers for hire charges paid and other expenses had not been produced, that these entries in the account books could not be verified, that full particulars of hire charges paid such as name and address of the person to whom hire charges had been paid was not available, that a substantially large amount of expenses on lorry hire, loading - unloading, brokerage etc. was supported merely by vouchers, that the vouchers for hire charges and other expenses did not contain names and addresses of recipients, and that in the

absence of the details, the entries of expenditure were not capable of verification. She, therefore, concluded that the books of accounts could not be relied upon to reflect the correct profits from business and therefore rejected the books and estimated the income of the assessee at 5% of gross receipts of Rs. 30,34,71,576/-, which comes to Rs. 1,01,73,579/-.

7. Before the CIT(A), the AR of the assessee submitted that the major part of the expenditure consisted of lorry hire charges for which the following documents were maintained.

i) An advance voucher is prepared at the loading place for payment of advance. The said voucher contains the lorry number, LR number, the product transported and the signature of the lorry driver

ii) A lorry hire pay order is prepared in triplicate, one copy is annexed to the advance voucher and another copy is given to the lorry driver. This contains the total amount payable towards transport charges, advance paid and the balance payable. The lorry driver carried the said lorry hire pay order along with the material.

iii) A consignment note is prepared in five copies showing the lorry number, date, the weight of the material loaded. One copy is given to the consignor, two copies are sent alongwith the material to the place of the consignee, one copy is retained with the advance voucher. Once the material reaches the consignee one copy of the consignment is signed confirming the receipt of the material.

iv) The said receipt by the consignee is brought to our branch at the place of the consignee and on confirmation of the delivery of the consigned goods to the consignee, the balance of amount is paid to the lorry driver.

v) The lorry driver acknowledges the receipt of the balance of the amount on the original lorry hire pay order.

vi) Each day the details of the lorries transporting the goods is separately maintained in bundles for each of the product transported.

vii) Based on the said details the payments are recorded in the books of account.

viii) The books of account are audited and the return of income is based on the said books of account.

7.1 The AR further submitted that the other major expense is on loading and unloading for which the payments are made to the hamalis available on the spot, for which vouchers are maintained. The AR also submitted that the full lorry-wise details of the lorry hire charges were available and that the signature of the driver is available firstly at the time of payment of advance, secondly, at the time of loading the material and thirdly, at the time of collecting the balance after showing proof of delivery of goods. The AR submitted that similarly detailed record is kept of the brokerage/commission paid. It was further submitted that the books of accounts had been duly audited. The AR also submitted that the books of accounts along with supporting evidence as called for was submitted before the Assessing Officer during the assessment proceedings.

7.2 In the course of the appellate proceedings, the CIT(A) directed the AR of the assessee to produce specimen bills and vouchers for one particular day, specified by him, viz. 02.04.2008. After examining these bills and vouchers, the CIT(A) found from these records produced before him that the bills and vouchers maintained by the assessee to record the lorry numbers in each case and are also capable of cross-verification. The system of record-maintenance described in para 7. above is exhaustive and comprehensive. He, therefore, held that there is no reason to hold that the entries

in the books are not amenable to verification and to reject the books and accordingly, set aside the estimation of income by the AO at 5% and directed the AO to accept the profit returned by the assessee.

8. Before us, Id. DR submitted that the assessee has offered to tax only 1.8% of the gross receipts and AO has clearly brought on record that assessee has not maintained proper records for payment of huge lorry hire charges and loading/unloading charges. He submitted that the entries in the books are not traceable and, therefore, the AO was right in estimating the income.

9. The Id. AR submitted that the assessee follows different method for transport business transaction, for each transaction assessee maintains the voucher system on each day/trip wise. He submitted that the department can track the payment and relevant expenses on trip basis as this is very much traceable, transaction to transaction. He submitted that it is unfortunate that AO has not understood the method of accounting followed by the assessee.

10. Considered the rival submissions and perused the material on record. We notice that assessee has made transport business to the extent of Rs. 20.34 crores. He maintains or arranges lorry from others for the purpose of transport. The average hire charges per lorry ranges from Rs. 3,000/- to Rs. 10,000/- according to the distance/load. The assessee maintains books on gross daily receipts and payments. He maintains separate register for collection of advance and final collection with the full details of trips based on each lorry. This traceable with the lorry registration number. The particular trip sheet contains the advance

collection, hamali charges for loading and unloading charges. These are traceable on day-wise/trip-wise. These micro information are not available in the regular receipts & payment register maintained by the assessee. In our view, each industry has its own method of accounting. AO has to understand the system of the particular industry. In this case, the Id. CIT(A) has verified the system himself and found to be proper. We are in agreement with the findings of Id. CIT(A). Therefore, ground Nos. 2 & 3 raised by the revenue are dismissed.

11. As regards ground No. 4 relating to addition of Rs. 83,20,000/- u/s 68 of the Act, the Assessing Officer found from a perusal of the cash book that the assessee had made capital introduction of Rs. 1,12,70,000/- in cash and capital withdrawal of Rs. 1,10,45,728/- However, as per the capital account, the following entries had been made:

Opening capital balance as on 1.4.2008	Rs. 29,55,845/-
Add: Net profit for the AY 2009-10	Rs. 38,74,558/-
C/o capital balance as on 31.3.2009	Rs. 68,30,412/-

11.1 The assessee vide his letter dt. 30.12.20011 submitted as under:

"We have different business as proprietor, we hire vehicles to transport goods from one place to another and at the same time we have our own vehicles to transport goods. Both businesses are in proprietorship concerns only.

The proprietor owns 6 goods vehicles (trucks) runs on hire the revenues received by him in given to new Mahindra Road Ways cash for short adjustment of paying lorry hire by the firm, whenever the firm receives funds it will be paid back to him. Whatever paid to New Mahindra Road Ways in paid back to proprietor (in cash) and the account was nil at the end of 31.3.2009."

11.2 The AO did not accept this explanation. She noted that M/s. New Mahindra Road Ways and M/s. Mathosri Road Lines were two separate proprietary concerns of the assessee, that books of accounts were maintained for M/s. New Mahindra Road Ways wherein income of Rs.2,52,000/- from Mathosri Road Lines was admitted u/s. 44AE, that the total receipts from plying of the six own vehicles of M/s. Mathosri Road Lines was Rs. 79,51,759/- against which expenses of Rs. 77,51,149/- had been claimed and net profit from commission was declared at Rs. 2,00,610/-. She also wondered how the assessee had claimed expenditure towards hire charges when the vehicles were owned by him. She concluded that in any event, M/s. Mathosri Road Lines did not have cash availability, after meeting its expenses, for making the cash deposits into the books of M/s. New Mahindra Road Ways. She therefore, assessed the peak cash credit of Rs.83,20,000/- as per the cash book u/s. 68.

11.3 Before the CIT(A), the AR of the assessee submitted that the assessee was carrying on three different business activities, which are:

a. Transport of cement and raw material between Dachepally to Visakhapatnam in the name and style of M/s. New Mahindra Road Ways for M/s Andhra Cements for which the assessee's own lorries as well as hired lorries were used.

b. Running his own six lorries 'for which the income is disclosed u/s. 44AE. This business had not been given any separate name and the lorries had been used for the business of Mis. New Mahindra Road Ways.

c. Business of brokerage / commission in the name and style of M/s. Mathosri Road Lines.

11.4 The AR explained that payment was recorded to have been made for the use of own lorries (as it was done for hired lorries) in the books of account of M/s. New Mahindra Road

Ways. He submitted that the payment towards his own lorries was withdrawn by him from the business of New Mahindra Road Ways and reintroduced in the books as and when required. The AR submitted that the payment made by New Mahindra Road Ways for the assessee's own lorries amounted to Rs. 1,24,91,249/- for which income of Rs.2,52,000 had been admitted u/s. 44AE.

11.5 The AR also submitted that the business of Mathosri was of brokerage or commission and not the plying of own lorries and to this extent, there appeared to be a mis-appreciation of facts by the Assessing officer.

11.6 After considering the submissions of the AR of the assessee, the CIT(A) deleted the addition by observing as under:

"8.7 I have considered the facts on record and the submissions of the AR. With a view to verify the assessee's claim, the AR was directed to produce the cash book and the supporting bills and vouchers for one specific date 02.04.2008. On examination of the cash book for this day, it is seen that a sum of Rs. 34,995/- is debited as advance lorry hire paid for gypsum. It is seen from the statement of 'gypsum - advance lorry hire' for this date that the sum of Rs.34,995/- includes a sum of Rs. 18,145/- paid for two lorries owned by the assessee, viz. AP 29 TA 1019 and AP 29 TA 1594. Similarly, a sum of Rs. 34,248/- has been debited as advance lorry hire paid for coal which includes a sum of Rs. 6,748/- paid for the assessee's own lorry AP 29 TA 1017. There are further such payments included in the lorry hire paid on this day as per the cash book.

8.8 It is thus seen that the assessee is following a method of accounting wherein payments made to himself are also recorded in the books of New Mahindra Road Ways. While this method of accounting may be considered unusual, it cannot be held unacceptable or objectionable. The addition made by the Assessing Officer appears to have been a result of failure to understand this peculiarity in the assessee's books. As stated by the assessee, the assessee has three distinct

businesses. Books of account are maintained only for New Mahindra Road Ways and Mathosri Road Ways. The income from the business of own lorries (which does not have a trade-name) has been returned u/s. 44AE. The assessee is entitled to do so. Since, the profit claimed by him is not less than the amount specified in sub.sec 1 and 2 of Sec. 44AE, the assessee was not required to maintain books of account or to get his accounts audited u/s. 44AB. The books for M/s. New Mahendra Road Ways, on the other hand, have been duly audited and the gross receipts for the assessee's 44AE business (for want of a better name) can be verified from these books (recorded as expenses in it). Under the circumstances, it has to be held that the assessee had cash availability of Rs. 1,24,91,249/- from his 44AE business for investment in the capital of New Mahindra Road Ways apart from cash availability from Mathosri Road Lines. The assessee's claim" that the cash deposits in the capital account of Mis New Mahendra Road Ways had been made out of his other proprietary businesses is, therefore accepted and the addition u/s. 68 is deleted."

12. Before us, Id. DR relied on the order of AO and objected the deletion of addition by the CIT(A) without giving opportunity to AO as assessee has submitted additional evidence before him, which is against rule 46A.

13. The Id. AR submitted that assessee has different method of accounting cash management and AO has not understood the method. Assessee has peculiar way of recording cash receipts and payments as he has to deal with his three business ventures.

14. Considered the rival submissions and perused the material on record. We notice that assessee maintains cash book for all these ventures and wherever there is requirement in all three ventures, he utilizes the funds. In that process, in the hands of the assessee, he controls the same in his capital account. AO has accumulated the whole year transactions and came to the conclusion that there is huge capital introduced.

In the day to day activities, the requirement of capital is across the venture/business may not be to that extent. It is the maximum utilization of available funds as per the method suitable to the assessee. AO cannot determine how the cash should be utilized in the business. Ld. CIT(A) has already verified the method of accounting and he has satisfied with the method. In our view, AO has not even tried to understand the method followed by the assessee and we are in agreement with the findings of Id. CIT(A). Accordingly, we uphold the action of the CIT(A) in deleting the addition made on this count and dismiss the ground No. 4 raised by the revenue.

15. In the result, appeal of the revenue is dismissed.
Pronounced in the open court on 10th October, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 10th October, 2018

kv

Copy forwarded to:

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3. CIT(A) - VI, Hyderabad
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