

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT
MEMBER

AND

SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.6523/Del/2017
Assessment Year: 2013-14

Arrow Manpower Services (P) Ltd., Vs ACIT,
C-248, First Floor, Surajmal Vihar, Central Circle-28,
New Delhi – 110 092. New Delhi.

PAN: AAFCA7531E

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	26.07.2023
Pronouncement :		26.07.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.6523/Del/2017 for AY 2013-14 arises out of the order of the Commissioner of Income-tax (Appeals)-31, New Delhi [hereinafter referred to as the 'Id. CIT(A)] in Appeal No.75/2016-17/185/16-17 dated 12.07.2017 against the order of passed by the Id. Assessing Officer, Central Circle-28, New Delhi

(hereinafter referred to as 'ld. AO') passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2016.

2. The assessee has raised the following grounds of appeal:-

“1. That the assessment order passed u/s 143(3) of the I.T. Act, 1961 on 31/03/2016 and upheld by the Ld. CIT(A) on 12.07.2017 are perverse to the law and to the facts of the case because of not following proper law and procedure while completing the assessment proceedings.

2. That the assessing officer has grossly erred in law and to the facts of the case in making lump-sum addition of Rs. 12,26,467/- being commission income in the hands of the appellant at the rate of 0.60% merely on the basis of his presumption and guess work, without the support of any material either collected or placed upon records, which the Ld. CIT(A) has failed to appreciate while adjudicating the appeal.

3. That the addition made of Rs. 12,25,467/- were only on the basis of presumption and guess work of the assessing officer because the provision of law contained u/s 145 has never been invoked besides this the assessing officer has farther failed to appreciate, that on the identical facts the declared income have already been accepted as correct in the preceding year, and in the subsequent years also.

4. . That the order passed is unconstitutional, having no locus standi under law as the assessing officer has charged commission on lump-sum basis @ 0.60% on the entire transactions appearing as credited in the bank of the appellant company for Rs. 20,42,44,469/-.

5. That the Ld. AO has grossly erred on facts of the case as even after accepting profits as per books of account he presumed that the appellant company is in the business of providing accommodation entries without the support of any material either collected or ever placed upon records.

6. That no proper and reasonable opportunity, if any was ever afforded by the assessing officer and by the Ld. CIT(A) prior proceeded to complete the assessment proceedings and to adjudicate the appeal arbitrarily capriciously and in a whimsical manner thereby making illegal and impugned additions in the declared income of the appellant.

7. That the addition of Rs. 4,03,213/- made on the basis of interest income appearing in the Form 26AS of the appellant company is also perverse to the law and to the facts

of the case as not tenable, because of posting as forming part of the Other Receipts appearing in the Profit & Loss A/c in the books of accounts of the appellant company.

8. That the order passed by the Ld. CIT(A) were further not justified under the law and to the facts of the case, because the remand report which has been considered on the back of the appellant while adjudicating the appeal has never confronted / provided copy thereof to the appellant for its rebuttal thereof, prior to adjudication the appeal.

9. That the addition for the excess of depreciation of Rs.13.740/- as alleged by the Assessing Officer was also not legal under the law and to the facts of the case.

10. That charging of interest under Section 234B and initiating penalty proceedings u/s 271(l)(c) are further wrong as against the law and to the facts of the case as such the same may please be deleted because of being consequential to the illegal addition made and relief claimed there from.

11. That the appellant company assails their right to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of this instant appeal.

PRAYER:

It is, therefore, prayed that:

1. That the illegal and impugned addition made in the declared income of Rs. 16,42,420/-, may please be deleted / quashed.
2. That the interest charged u/s 234B and penalty proceedings initiated u/s 271 (l)(c) of the Act, may also be waived being consequential to the illegal and impugned additions made and relief claimed therefrom.
3. Any other relief which this Hon'ble Court may please be deemed fit and proper on the facts and in the circumstances of the case.

It is prayed accordingly.”

3. At the outset, we find that none appeared on behalf of the assessee. The appeal was filed by the assessee on 30.10.2017. The appeal was first listed for hearing on 12.01.2021. Commencing from 12.01.2021, the case was listed on

25.03.2021, 07.06.2021, 14.08.2021, 26.10.2021, 29.12.2021, 07.03.2022, 12.05.2022, 18.08.2022, 24.11.2022, 27.02.2023, 09.05.2023 and 26.07.2023 i.e., today. On none of these occasions, the assessee either in person or through its authorized representative was present for prosecuting the appeal. Not even an adjournment petition was filed by the assessee. The notices sent to the assessee to the address mentioned in Form No.36 has been returned unserved by the Postal Authorities with the remarks, 'No such person.' Further an e-mail has also been sent to the authorized representative of the assessee which also did not fetch any fruitful result. In view of the continuous non-appearance of the assessee and his authorized representative, we proceed to dispose of this appeal by hearing the Id.

DR and based on the material available on record.

4. The assessee filed its return of income for the AY 2013-14 on 02.12.2014 declaring the total income at Rs.1,48,380/-. The assessee pleaded before the Id. AO that it is carrying on business activity. But, no evidence whatsoever was furnished by the assessee before the Id. AO to justify the fact that the assessee was indeed carrying on any business. Accordingly, the Id. AO rejected the plea of the assessee that it is conducting any business. Further, the Id. AO proceeded to examine the bank statements of the assessee from which he found that there were total credits to the tune of Rs.20,42,44,469/- in Axis Bank and the same figure was represented in the debit side also during the year. Accordingly, the Id. AO concluded that since monies were credited in the bank account of the assessee and immediately thereafter, the same were paid to some parties, which goes to prove that the assessee is merely an entry operator doing transactions of receipt of monies and issuance of monies on behalf of third parties. No details of persons from whom monies were

received and no details of persons to whom payments were made were furnished by the assessee. Accordingly, the Id. AO concluded that the entire transactions reflected in the said bank statement are mere transactions carried out by the assessee in the capacity of an entry operator. Hence, he proceeded to charge only the commission income on those accommodation entries in the hands of the assessee. This commission income was estimated at 0.60% by the Id. AO and an addition of Rs.12,25,467/- was made in the assessment. This action of the Id. AO was upheld by the Id.CIT(A) as no evidences could be furnished before the Id.CIT(A) to buttress the arguments of the assessee.

5. Before us also, the assessee was not able to buttress his arguments by filing cogent documentary evidences even to prove that it is engaged in some business activity and that the credits and debits in the aforesaid bank account are business transactions. In these facts and circumstances, we do not deem it fit to interfere in the order of the Id.CIT(A) upholding the estimation of commission income @ 0.60% on total bank transactions. Accordingly, the addition of Rs.12,25,467/- made by the Id. AO is hereby upheld.

6. Further, the Id. AO observed that as per Form 26AS, the assessee had earned some interest income amounting to Rs.4,03,213/- on which tax has been deducted at source u/s 194A of the Act by certain parties. Since no interest income was shown by the assessee in the return of income, this sum was added to total income by the AO while completing the assessment. Before the Id.CIT(A), the assessee submitted the break-up of Rs.4,03,213/- as amount received from the following

parties:-

i) Koshda Buildcon Pvt. Ltd.	Rs.23,055/-
ii) GDR Finance & Leasing Pvt. Ltd.	Rs.1,78,973/-
iii) Harvinder Singh Bhasin	Rs. 58,500/-
iv) Lemon Developers Pvt. Ltd.	Rs.1,42,685/-
Total	Rs.4,03,213/-

7. The assessee submitted that the aforesaid receipts represent interest income received from the aforesaid parties and the same has been erroneously included in the total turnover of the assessee company which are already reflected in the bank statement. Accordingly, he pleaded before the Id.CIT(A) for deletion of the addition. The Id. CIT(A) observed that no evidence has been filed by the assessee to prove the aforesaid arguments and even gave a finding that the explanation submitted by the assessee is false. Accordingly, he upheld the action of the Id. AO. Even before us, we find that no evidence has been filed by the assessee or by his authorized representative to justify the fact as to whether this interest income of Rs.4,03,213/- has been included in the total turnover. In any case, it is not in dispute that the amounts received from the aforesaid four parties represent interest income only which needs to be assessed separately under the head 'Income from other sources'. Once the receipt represents interest income which has been subjected to deduction of tax at source u/s 194A of the Act by the payers, then it cannot be part of total alleged business receipts as stated by the assessee and the said interest income is to be taxed separately under the head 'income from other sources' which has been rightly done by the lower authorities. Hence, we do not find any infirmity in the action of the lower authorities in this regard. Accordingly, the addition of

Rs.4,03,213/- is hereby upheld.

8. We find that in the ground No.9, the assessee had raised an issue challenging the disallowance of excess depreciation on Rs.13,740/- made by the Id. AO. In this regard, we find that since the Id. AO had disbelieved the existence of any business being carried on by the assessee, accordingly had proceeded to disallow the depreciation claimed by the assessee in the sum of Rs.13,740/-. This issue was not even agitated by the assessee before the Id.CIT(A). But, this issue is agitated before us vide ground No.9. We have already held that the assessee is not carrying on any business. Accordingly, it would not be entitled for depreciation u/s 32 of the Act. In any case, this issue does not arise out of the impugned order of the Id.CIT(A) before us. Hence, ground No.9 raised by the assessee is dismissed.
9. We find that the assessee had disclosed a sum of Rs.1,48,380/- as returned income under the head 'Income from business.' Since we have already held that no business is carried on by the assessee and it has been merely providing accommodation entries to various parties to earn commission income thereon, thus, business income of Rs.1,48,380/- voluntarily offered to tax by the assessee should not be brought to tax. Hence, we hold that this sum of Rs.1,48,380/- is available to the assessee for telescoping benefit and the same would be telescoped with the aforesaid additions confirmed hereinabove. The Id. AO is hereby directed to give credit of Rs 1,48,380/- while determining the income of the assessee.
10. The ground No.10 raised by the assessee is regarding chargeability of interest u/s 234B which is consequential in nature and does not require any specific adjudication. Further,

initiation of penalty proceedings u/s 271(1)(c) of the Act is also being agitated by the assessee, which would be premature for adjudication at this stage and, hence, dismissed.

11. Grounds No.1 and 11 raised by the assessee are general in nature and does not require any specific adjudication.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.07.2023.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 26th July, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi