

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No. 114 of 2015

ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

The assessment order was revised by the Commissioner whereby a sum of Rs.17,00,887/- was added to the income returned by the assessee on the ground that the amounts correspond to the TDS certificates having been offered for tax. The first appellate authority had dealt with this aspect in its orders dated 09.02.2009; paragraph 4 of which reads as under:

4. The last ground of appeal is against the addition of Rs.17,00,887/-.

4.1 During the assessment proceedings, AO cross verified the accounts of seven seller parties & determined the difference at Rs.17,00,887/- in brokerage receivable shown in the assessee's accounts and sellers accounts. The detailed computation is mentioned in para 4 of the assessment order. The said amount of Rs.17,00,887/- was added as suppressed receipts of the appellant.

4.2. During the appeal proceedings, Id. AR submitted that the aforesaid addition amounts to double taxation since the brokerage amount of Rs.18,79,778/- was taxed on accrual basis as per the TDS certificates. The AO added the difference

under the mis-conception that the difference represented the amounts paid to the assessee while in fact they are the amounts debited on account of non payment by the buyers.

4.3 On perusal of the relevant parties account, I agree with the contention of the appellant. AO has erred in ignoring the debits made to the assessee's account by the seller parties. He failed to appreciate that the credit & debit balances in the books of the sellers were not on account of brokerage alone but after adjustment of the brokerage against the amounts due from buyers for which the appellant was responsible to the sellers, being a del cre dere agent. As held above, the cash system of accounting followed by the appellant is an acceptable method of accounting. Hence, the addition of Rs.17,00,887/- made by the AO is deleted.”

2. Before the Income Tax Appellate Tribunal, there was no challenge to this finding of fact, particularly the fact that the assessee, as a matter of fact, did not receive the sums for which the TDS was made and on account of the fact that the assessee was a del cre dere agent and as such the assessee did not receive these amounts as it was following cash system of accounting so far as these transactions are concerned.

3. The fact of the matter that the assessee was accounting these transactions on cash basis has not been challenged before the Tribunal. The Tribunal, in fact, considered this aspect in its orders dated 03.02.2014 and recorded as under:

“..... In the circumstances, even the TDS certificates would not be a clinching material to determine the actual income assessable in the hands of the assessee. In any event, the CIT(A) while accepting the claims of the assessee with regard to the returned incomes for th years under appeal, also held at the same time that the assessee is eligible to claim credit for TDS only in respect of income offered for tax in the relevant year. In that process, the CIT(A) also upheld the view taken by the Assessing Officer that the assessee cannot claim credit for the TDS unless and until the income in relation to which TDS, was made was offered to tax in the relevant year. Since the assessee is found to be a del cre dere agent, the role of the asessee, as observed by the CIT(A) in the impugned order, does not cease simply on booking the order for the seller or the delivery of goods to the purchaser, but extents till the time the sale proceeds are realized by the seller from the buyer. Considering the nature of the assessee’s business, as a del cre dere agent, in which actual receipt of the brokerage would depend on the actual realization of the sale proceeds by the seller from the purchaser, as claimed by the assessee and accepted by the CIT(A), assessee is justified in following cash system of accounting, finding it to be appropriate for its business. When the assessee claims to be following that method of accounting consistently, and it has been recognized by the statute, there is no justification for the Assessing Officer to disturb the book results disclosed by the assessee. In this view of

the matter, we do not find any infirmity in the orders of the CIT(A) on this aspect. We accordingly uphold the same, rejecting the grounds of the Revenue on this issue in the appeals for all the three years.”

4. Though a question of perversity is sought to be raised before us, except raising the question, no material is placed before us to take a contra view and upset the finding recorded by the Tribunal.

5. In the circumstances, we see no question of law that requires to be answered in this appeal.

6. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

29th October, 2015

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