

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.315/Del/2022
निर्धारणवर्ष/Assessment Year:2016-17**

DCIT, Circle 61(1), Delhi.	बनाम Vs.	SUKHBIR SINGH CHABRA HUF 6, Rani Jhansi Road, Motia Khan, Delhi. PAN No.AAAHS5683P
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Satyen Sethi, Adv. & Shri A.T. Panda, Adv.
Revenue by	Shri Manish Gupta, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	21.08.2025
उद्घोषणाकीतारीख/ Pronouncement on	04.11.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. CIT(Appeals)-33, Delhi dated 28.02.2020 for the AY 2016-17 in deleting the addition made by the Assessing Officer as unexplained income of the assessee from truck running business.

2. Heard rival contentions, perused the orders of the authorities below. In this case the Revenue also filed following additional grounds of appeal:

a) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the additional evidences filed by the assessee without according an opportunity to AO to examine the same in utter violation of Rule 46A of Income Tax Rules, 1962.

b) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the submissions filed by the assessee without any cross verification or calling any remand report from AO."

3. Ld. DR submitted that the assessee has filed additional evidences before the Ld. CIT(Appeals) in violation of Rule 46A of the I.T. Rules and therefore the Ld. CIT(Appeals) erred in allowing the appeal of the assessee without giving any opportunity to the AO to verify the additional evidences/submissions made by the assessee.

4. On the other hand, the Ld. Counsel for the assessee submitted that the assessee has not furnished any additional evidences before the Ld. CIT(A) whatever evidences furnished before the AO in the course of assessment proceedings the same were furnished before the Ld. CIT(A).

5. Further the Ld. Counsel for the assessee filed brief synopsis as under:

“BRIEF SYNOPSIS

The assessee is in the business of providing transport services. For the assessment year 2016-17, return was filed declaring income of Rs.49,99,220/-. It included business income of Rs.21,20,119/- (income of Rs.9,00,000/- was declared u/s 44AE & income of Rs.12,20,119/- was declared u/s 44AD) of Income Tax Act, 1961 (the Act). Out of receipts of Rs.3,73,84,776/-, Rs.3,38,41,880/- was from ABC Transport Company P Ltd. ('ABC Transport'), a related party. Remaining Rs.35,42,896/- was from non-related parties.

Assessment order - addition of Rs.1,69,20,940/-

In respect of receipts from ABC Transport, the Assessing Officer has noted that:

- (a) In response to notice u/s 133(6), ABC Transport provided hire slips prepared and ledger account of assessee in its books of account. Third-party evidence like sale bill raised by ABC Transport to its customers was not provided (page 3 o f the order);*
- (b) ABC Transport has been taking transport services from the related parties. Each of the party is declaring income u/s 44AE & 44AD and payment made to the related parties is claimed as business expense, resulting in tax evasion, inasmuch as, ABC Transport saved tax @33.33% on payment of Rs.3,38,41,880/- made to the assessee, whereas, the assessee has offered income of Rs.8,14,708/- u/s 44AE, which is only 2.41% of the receipt from ABC Transport (page 5 o f the order);*

Though no adverse inference was drawn by the TPO u/s 92CA(3) in the case of ABC Transport, however, the Assessing Officer at page 8 o f the order has held that:

“The assessee, the company and the group are one and the same party. This entire arrangement is to divert profit by misusing the provisions of 44AE.

The assessee has not been able to prove that the receipts are from truck running business. Merely owning 10 trucks does not imply that the assessee is engaged in truck hiring business and earning income therefrom.”

Alleging tax evasion, 50% of the receipt from ABC Transport i.e. Rs.3,38,41,880/- was treated as unexplained income, resulting in addition of Rs.1,69,20,940/-.

Second addition - Rs.5,38,967/-

Having treated 50% of the receipt of Rs.3,38,41,880/- as unexplained income, balance 50% was subjected to tax @8% (u/s 44AD - though not referred). It worked out to Rs.13,53,675/-. Since Rs.8,14,708/- had already been declared as income, therefore, addition of Rs.5,38,967/- (13,53,675 - 8,14,708) was made as business income from the related party.

Proceeding before CIT(A)

CIT(A) referring to the order in the case of another related party - Chhabra Carriers (para 3 of assessment order) allowed the appeal. Referring to A Raman & Co. (1968) 67 ITR11 (SC), the CIT(A) held that a tax payer can reduce his liability by commercially arranging his affairs and that the transactions with the related party were part of tax planning.

Proposition - I: Allegation of tax evasion

The entire case of the Assessing Officer is based on alleged tax evasion between ABC Transport and its related entities. The Assessing Officer did not appreciate that "the Revenue cannot start with the question as to whether the transaction is a tax deferment / saving device, rather, it has to apply the "look at test" to ascertain the true legal nature, for genuine strategic tax planning is permissible, as has been held in Vodafone International Holdings B.V. v. UOI (2012) 341 ITR 1 (SC). At page 108 of the report, Hon'ble Apex Court has observed that:

"that every tax payer is entitled to arrange his affairs so that his taxes shall be as low as possible and that he is not bound to choose that pattern which will replenish the treasury. Revenue's stand that the ratio laid down in McDowell is contrary to what has been laid down in Azadi Bachao Andolan case (supra), in our view, is unsustainable and, therefore, calls for no reconsideration by a larger branch."

Further, at page 101, the Hon'ble Court while rejecting the stand of the Revenue that TRC issued by Mauritius Tax Authorities does not preclude Indian Tax Authorities to deny the benefits of India - Mauritius DTAA, where the Mauritius entity is interposed as

owner of shares of the Indian Companies at the time of disposal of shares has observed that:

"No presumption can be drawn that the Union of India or the Tax Department is unaware that the quantum of both FDI and FII do not originate from Mauritius but from other global investors situate outside Mauritius. Mauritius, it is well known is incapable of bringing FDI worth millions of dollars into India. If the Union of India and Tax Department insist that the investment would directly come from Mauritius and Mauritius alone then the Indo-Mauritius treaty would be dead letter."

In CIT v. High Energy Batteries (India) Ltd. (2012) 348 ITR 574 (Mad), the assessee had entered into purchase & lease back transaction with its sister concern, Pooni Sugars Ltd. In terms of which, it purchased a boiler for Rs.2.50 Cr. and paid Rs.50 lacs. Balance Rs.2 Cr. was financed by Wipro Finance Ltd. Having purchased the boiler, it was leased back to Pooni Sugars Ltd. Depreciation claimed by the assessee was disallowed alleging the arrangement as a camouflage. Hon'ble Court applying rationale of Vodafone case held that:

"...in the absence of any material to pronounce on the genuineness of the transaction herein, the mere fact that what had been purchased had been leased out to the vendor or that vendor had undertaken to pay the hire charges on behalf of the assessee to the hire purchase company, per se, cannot lead to a conclusion that the transaction is a sham one."

In Michael E Desa v. ITO (2021) 191 ITD 691 (Mum), applying Vodafone case, ITAT has held that though there is thin distinction between a tax planning and tax avoidance, however, a transaction cannot be disregarded just because it results in tax advantage.

Proposition - II: Scope of enquiry under section 44AE

In CIT v. Nitin Soni (2012) 207 Taxman 332 (All), the assessee a director of Northern Alkalies (P) Ltd. declared income u/s 44AE from eight trucks. Disregarding section 44AE, the Assessing Officer assessed the income as from other sources and made addition of Rs.29,21,738/-. In appeal, relief was allowed by the CIT(A), which order was upheld by ITAT. Before Hon'ble High Court, the stand of the department was that notwithstanding the applicability of section 44AE, it is for the assessee to explain

the excess income. Hence, the addition was rightly made. Hon'ble Court referring to Circular No.684 dated 10.6.1994 (1994) 208 ITR (St) 8 @ 31 held that:

"The very purpose and idea of enactment of such provision like Section 44AE of the Act is to provide hassle free proceedings. Such provisions are made just to complete the assessment without further probing provided the conditions laid down in such enactments are fulfilled. The presumptive income, which may be less or more, is taxable. Such an assessee is not required to maintain any account books. This being so, even if, its actual income in a given case, is more than income calculated as per sub-section (2) of Section 44AE, cannot be taxed.

Thus, it follows the query of the Assessing Officer as to how the assessee met his daily expenses, there being no withdrawal and conclusion of additional income was uncalled for."

Proposition - III: Mathematic analysis

The mathematic analysis made at page 5 of the assessment order that profit offered by the assessee was 2.41% of the turnover is no reason to say that receipts from ABC Transport was a tax evasion arrangement. In Nand Lal Popli v. DCIT (2016) 160 ITD 413, Chandigarh Bench of the Tribunal in the context of section 44AD has held that:

"The first important term here is 'deemed to be', which proves that in such cases, there is no income to the extent of such percentage, however, to that extent, income is deemed. It is undisputed that 'deemed' means presuming the existence of something which actually is not. Therefore, it is quite clear that though for the purpose of levy of income tax 8% or more may be considered as income, but actually this is not the actual income of the assessee. This is also the purport of all provisions relating to presumptive taxation.

Putting the above analysis, in converse, it can be easily inferred that the same is also true for the expenditure of the assessee. If 8% of gross receipts are 'deemed' income of the assessee, the remaining 92% are also deemed' expenditure of the assessee. Meaning thereby that actual expenditure may not be 92% of gross receipts, only for the purposes of taxation, it is considered to be so. To take it

further, it can be said that the expenditure may be less than 92% or it may also be more than 92% of gross receipts."

Applying the aforesaid judgments & orders, the Assessing Officer was not justified in treating the receipts from ABC Transport as unexplained income.

Proposition - IV: On facts, the mandate of section 44AE could not have disregarded

In the assessment order, the Assessing Officer has inter-alia recorded that (i) payment by ABC Transport to the assessee was 'truck hire expenses', (ii) each of the related party on an average owned ten trucks in a year (page 6 of Asstt. Order) and (iii) the entire receipts of Rs.3,38,41,880/- from related party cannot be treated as receipt from truck running business (page 8 & 9 of Asstt. Order).

Thus, it has not been doubted that the assessee owned ten or less than ten trucks during the year. It is also not in dispute that the receipts were from truck running business. The Assessing Officer has also not doubted the receipt of Rs.35,42,896/- from 62 parties from transportation business. Further, the Assessing Officer himself has accepted 50% of receipt from ABC Transport as from transport business, therefore, the AO could not have disregarded the mandate of section 44AE of the Act, moreso because no adverse inference was drawn by the TPO u/s 92CA(3) in the case of ABC Transport (page 5 of CIT(A) order).

It is submitted accordingly.

*(Satyen Sethi)
Advocate*

Date: 29.08.2024"

6. Heard rival contentions, perused the orders of the authorities below. We observed that the Revenue though raised the additional ground on furnishing of additional evidences under Rule 46A the Revenue could not point out which documents were furnished before the Ld. CIT(A) as additional evidences. Further the certificate given by the assessee through its Counsel suggest that

the documents were all furnished before the AO as well as the Ld. CIT(A). Therefore, since the Revenue could not prove which document was filed as additional evidence the same is rejected.

7. Coming to deletion of addition made by the Ld. CIT(A), we observed that the Ld. CIT(A) considering the submissions of the assessee and the averments of the AO and the evidences furnished by the assessee deleted the addition observing as under:

“2. The appellant is an HUF managed by Sukhbir Singh Chhabra and engaged in the business of providing transportation services. The appellant has declared his income u/s 44AE and u/s 44AD of the Act. The A.O during the course of assessment proceedings has noted that the appellant is a part of network of transport providers, all of which are related to ABC Transport Company Pvt. Ltd. During the course of assessment proceedings, the A.O noted that the company has several related parties that were run and managed by its directors and their family members. Receipts of each these parties were from ABC Transport Company Pvt. Ltd. The A.O has looked at the whole transaction from the perspective of the group wherein, 80 trucks are owned by related entities and central to the whole group was the ABC Transportation Company Pvt. Ltd. From the details available, the A.O has concluded that the appellant was misusing beneficial provisions of Section 44AE and 44AD of the Act. Further, the A.O has also observed that the appellant has not been able to justify whether the total amount received from the related party pertains to the truck running business as claimed u/s 44AE. The AO has cast doubt on the genuineness of the business transaction of the appellant.

3. Aggrieved against the said order, the appellant is in appeal. In response to various statutory notices, the AR of

the appellant Sh. Gurjeet Anand, CA appeared and filed various submissions and supporting documents.

3.1 The following grounds of appeal have been taken by the appellant:-

1. On the facts and circumstances of the case, the order passed by the learned Assessing Officer (AO) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned A. O. has erred both on facts and in law in making assessment at an income of Rs. 2,24,59,130/- as against returned income of Rs.49,99,220/- filed by the assessee.

3. The Assessing officer has erred by adding Rs.1,69,20,940/- to the returned income at an amount equivalent to 50% of gross receipts of Rs.3,38,41,880/- declared by the assessee from the principal customer M/s ABC Transport Company Pvt Ltd as unexplained income.

4. The Assessing officer has erred in making second addition of Rs.5,38,967/- by presuming the income covered u/s 44AE amounting to Rs.13,53,675/-(being the income calculated at the rate of 8% of the 50% of gross receipts of Rs.3,38,41,880/-) minus 2.41%o (being the presumptive rate of income determined by the assessing officer from transportation activity) of the gross receipts declared by the assessee from principal customer amounting to Rs.3,38,41,880/-.

5. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in drawing adverse inference against the assessee, in ignoring the documents/ details submitted by the Assessee during the assessment proceedings and by denying proper and adequate opportunity to assessee to rebut the same and failing to discharge the onus casted upon the Assessing officer..

6. On the facts and circumstances of the case, the addition made by the learned AO is untenable in the eye

of law and had been made without following the principle of natural justice, as the assessing officer had failed to share with assessee materials, information, records in possession of AO, based on which the presumptions, theories, conjectures had been formulated by Assessing officer.

7. That the Assessing officer had erred by proceeding with pre-conceived motive to make addition.

8. On the facts and circumstances of the case, the addition made by the learned AO is untenable in the eye of law, as the Assessing officer had erred by not passing a speaking order. The Assessing officer had failed to comment over the replies/ submissions made by the assessee during the assessment proceedings and had rather passed the order based on issues not relevant to the case of assessee.

9(i) On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making the addition without acting judicially and after ignoring the detailed explanations made by the Assessee and by the principal customer of the assessee in response to the notice u/s 133(6) issued by the Assessing Officer.

(ii) That the above said addition has been made by indulging in surmises, conjectures and without bringing any material on record.

10. On the facts and circumstances of the case, the learned AO has erred both on facts and in law by forming an under-mentioned opinion:

- a. That the transaction held with the principal customer and the assessee is merely a system for providing book entry between the Company (Principal Customer) and its related parties.*
- b. That the company can divert any amount to its related party claiming it as an expense.*
- c. That the assessee is not a small tax payer, as the assessee along with its related parties are generating a large turnover and misusing the*

section 44AE and defeating the whole purpose of the beneficial provision.

- d. That the entire arrangement was basically a colorable devise to give the colour of genuineness to these transactions and that whole arrangement was created merely to shift/divert the profit of company to its entities wherein profit is not directly proportional to turnover.*
 - e. That the transactions between the assessee and its related party cannot be accepted as business income and are entered into to bring back unaccounted cash into the books without the need to pay any taxes.*
 - f No substantial evidence was provided by the principal customer of the assessee to prove that there is a business of plying trucks against which the company has paid truck hiring expenses to assessee.*
 - g. That the assessee had failed to prove the genuineness of the truck hiring receipts transaction and had not provided the information called for during the assessment proceedings.*
 - h. Disclosure u/s 40A(2B) was not made by M/s ABC Transport Company Pvt Ltd in its Audit report, hence claim of assessee that receipts from related party are covered u/s44AD/44AE remain unjustified/unexplained.*
- 11. On the facts and circumstances of the case, the Assessment order passed u/s 143(3) is bad in the eyes of law, considering under-mentioned facts :-*
- a) The Assessing officer has erred by proceeding beyond the scope of Limited scrutiny as per the 'reason for limited scrutiny' shared with assessee.*
 - b) The Assessing Officer had erred by stating the Principal customer of the assessee had failed to provide the information in complete, as all the*

requisite details sought u/s 133(6) of the Income Tax Act by the assessing officer, was duly submitted by the principal customer of the assessee.

- c) The assessing officer had erred by seeking details of expenditure made by the assessee against the transportation receipts covered u/s 44AE of the Income tax act, when the provisions of section 44AE itself states that no books of accounts are required to be maintained by the assessee covered u/s 44AE.*
- d) The Assessing Officer. While illustrating how assessee had evaded the tax, had arbitrarily formulated a presumptive income from transportation activity in comparison to the gross receipts u/s 44AE by violating the law prescribed and by forming the presumptions. Conjectures which are not based on reality.*
- e) The Assessing officer had erred in making addition by considering different related parties as single entity. As against, the Assessing officer was under obligation to verify and bring on record any instance of tax evasion which may arisen through transactions between related parties.*
- f) The Assessing officer has failed to bring on record where and how assessee has diverted any income.*

12. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in charging interest under Section 234A, Section 234B and Section 234C of the Act.

13. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in initiating penalty proceedings u/s 271A, 271B and u/s 271(1)(c) of the Income Tax Act.

14. The appellant craves leave to add, amend or alter any of the grounds of appeal.

4.Decision: - The grounds of appeal no. 1 to 10 being on identical issues are clubbed together for decision.

4.1 During the course of assessment proceedings, the A.O has pointed out that the whole transaction was designed for evasion of taxes. The appellant is a part of a network of related parties which have carried out business transactions. Central to the conclusions of Assessing Officer, is the company ABC Transport company P. Ltd. All related entities are providing services of transportation. The A.O has relied on the decision of Hon'ble Supreme Court -in the case of Me. Dowell & Co. Ltd. vs. Commercial tax Officer [1985] 22 taxman 11 (SC), and has held that colorable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it was honorable to avoid payment of tax by resorting to dubious methods. The A.O has also doubted the genuineness of the transaction and the very fact that the appellant was actually involved in the business of running trucks.

4.2 During the course of appellate proceedings, the appellant has furnished the following clarifications in support of the grounds of appeal advanced:

- (i) The appellant has clarified that the company i.e. ABC Transport Company P. Ltd. is in the nature of Goods Transport Agent (GTA) whereas, the appellant is a Fleet Operator. The GTA is essentially obliged to secure clients and the appellant is mandated to provide necessary trucks for transportation of goods. The appellant has also pointed out that in this line of business this is a general practice.*
- (ii) During the course of appellate proceedings, the appellant has also submitted that the expenditure incurred towards fuel, insurance, repair and maintenance etc. The appellant has also submitted various documents evidencing the fact that it actually carried out business transactions, which was doubted by the A.O.*

- (iii) *The appellant also filed details, showing complete list of vehicles to justify its claim u/s 44AE of the Act.*
- (iv) *The appellant has also brought on record the order of Ld. CIT(A)- 17 dated 26.09.2019, in the case of Chhabra Carriers (related party entity), wherein the practice of taking benefit u/s 44AE and 44AD has been approved.*
- (v) *The appellant has also brought on record, the order dated 27.04.2018 in the case of M/s ABC Transport Company Pvt. Ltd. which has been the subject matter of Transfer Pricing assessment. The TPO after examining of documents produced and taking into account the analysis therein has come to the conclusion that no adverse inference can be drawn, with respect to related parties u/s 92CA of the Act.*

4.3 From the facts enumerated hereinabove, it is evident that the appellant is justified in claiming the benefit of Section 44AE and 44AD of the Act. The appellant is justified in claiming benefit u/s 44AE and 44AD of the Act. This is justified in terms of number of trucks owned by the appellant (which in this case is 10) and also in view of the turnover which is basis of claiming benefit u/s 44AE and 44AD of the Act. In fact, during the course of the appellate proceedings, details of the trucks owned by the appellant were furnished. The evidence submitted points to the fact that benefit of section 44AE of the Act was definitely allowable.

4.3.1 With respect to the observations of the A.O that no actual transaction has been carried out, this is not borne out .by any evidence which the A.O has collected during the course of assessment proceedings. Moreover, during the course of appellate proceedings, the appellant has furnished set of documents which clearly point to the fact that the appellant has been carrying out the business of running trucks on hire. The evidence includes expenditure incurred towards fuel, repair and maintenance etc.

4.4 As the CIT(A)-17 in the case of related party namely Chhabra Carriers has already accepted the contention regarding simultaneous allowability of provisions of 44AE & 44AD of the Act, I do not find reason as to why the finding should be disturbed at this stage. In fact what the appellant has resorted to needs to be viewed from the perspective of tax planning. This is different from tax evasion. The law provides the tax payer to adopt such methods to reduce his tax burden. It is treated as legitimate and bona-fide. The Hon'ble Supreme Court in the case of A. Raman & Co. [1968] 67 ITR 11 (SC) has laid down that a tax-payer can reduce his liability, by so arranging his commercial affairs that charge of tax is distributed. From the facts of the case, the transaction including the arrangement of facts of the related party entity with the mother company points to a well designed method of tax-planning. The appellant is within his right to do so.

4.5 Taking into account the facts enumerated hereinabove, the grounds 1 to 10 is allowed.”

8. On careful perusal of the order of the Ld. CIT(A), we do not see any good reason to interfere with the findings of the Ld. CIT(A) and therefore we sustain the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 04.11.2025

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 04.11.2025

*Kavita Arora, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI