

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member ]

**I.T.A. No. 479/Kol/2021**  
**Assessment Year : 2017-18**

Mithoo Saraf (PAN: AJAPS 5028 F)	Vs.	ITO, Ward-40(1), Kolkata
Appellant		Respondent

Date of Hearing	15.06.2022
Date of Pronouncement	13.07.2022
For the Appellant	Shri Gaurav Mathur, Advocate
For the Respondent	Shri Nicholas Murmu, Addl. CIT

**ORDER**

**Per Shri Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-NaFAC, Delhi [hereinafter referred to as ‘Ld. CIT(A)’] dated 3.9.2021 for the assessment year 2017-18.

2. The assessee has assailed the order passed by Ld. CIT(A) for upholding the assessment order wherein the AO/CPC has assessed the income at Rs. 9,82,340/- as against the returned income of Rs. 3,43,199/-.

3. Facts in brief are that the assessee through his proprietary concern M/S Bansal Road Carriers is engaged in the business of transportation and logistics. During the year the assessee entered into a MOU with M/S DKS Logistics Pvt. Ltd. for carrying on the business of transportation and sharing profits and losses arising out of said business in the ratio of 60:40. The assessee has to use his PAN while doing the business of logistics and transportation and logistics under the MOU as stated above and TDS was deducted under the said PAN of the assessee. The assessee shared and paid to M/s DKS Logistics Pvt. Ltd. the profits falling to its share in accordance with MOU however, the entire amount of TDS was shown in form 26AS under assessee’s

PAN and was claimed by the assessee accordingly. Pertinent to state that M/s DKS Logistics Pvt. Ltd. has also shown the income received from the assessee under the MOU as business receipts and paid taxes accordingly. The AO/CPC assessed the entire income in the hands of assessee on the basis of TDS as appearing in Form 26AS whereas the assessee has parted with income under the MOU with M/s DKS Logistics Pvt. Ltd. which was taxed accordingly in the hand of other partner.

4. In the appellate proceedings also, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO on the ground that entire income was shown in the Form 26AS on the web portal in the name of assessee and therefore assessed correctly by the AO CPC.

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee has correctly shown his income based on the terms and conditions of MOU under which the assessee shared 60% of the profit calculated after reducing the operating expenses from the total freight received with M/s DKS Logistics Pvt. Ltd. in consideration of said company investing in the business of assessee. In view of these facts, we are not in agreement with the conclusion drawn by the Ld. CIT(A) that whatever income was shown in Form 26AS under assess's PAN is his income as the assessee has parted with the income with DKS Logistics Pvt. Ltd. under MOU. In our opinion only 40% of the total profit has to be assessed in the hands of assessee and 60% in the hands of M/s DKS Logistics Pvt. Ltd. We note that M/s DKS Logistics Pvt. Ltd. has shown the said 60% of the profits in its return of income. Accordingly we reverse the order of Ld. CIT(A) on this issue, however, we restore the matter to the file of AO for verifying the MOU and deciding the issue in accordance with the facts and our observation given hereinabove. Needless to say that income has to be assessed as per terms and conditions of MOU and not based on the TDS deducted in the name of assessee under her PAN no whereas the TDS credit in full has to be given to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 13<sup>th</sup> July, 2022

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Rajesh Kumar)  
Accountant Member

Dated: 13<sup>th</sup> July, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mithoo Saraf, 58/4, Girish Park North, West Bengal-700006.
2. Respondent – ITO, Ward- 40(1), Kolkata
3. The CIT(A)- NFAC, Delhi
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata