

**IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH, KOLKATA**

**Before :**

**Shri N.V. Vasudevan,                      Judicial Member,    and**  
**Shri M. Balaganesh,                      Accountant Member**

**ITA No. 2076/Kol/2013 A.Y : 2007-08**

Smt. Gulab Devi Sethia                      Vs.                      I.T.O Ward 48(2), Kolkata

PAN: AMQPS 8031D

(Appellant)

(Respondent)

For the Appellant/assessee: Shri S.M Surana, Advocate, Id.AR

For the Respondent/department: Shri Arun Kanti Sinha, JCIT, Id.Sr.DR

Date of Hearing: 07-04-2016

Date of Pronouncement: 13- 4 -2016

**ORDER**

**SHRI M.BALAGANESH, AM**

This appeal of the assessee arises out of the order of the Learned CIT(A), XXX, Kolkata in Appeal No. 48/CIT(A)-XXX/Wd-48(2)/2010-11 dated 31-01-2013 against the order of assessment framed by the Learned AO for the Asst Year 2007-08 u/s. 144/145(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The ground no.1 raised by the assessee is general in nature and does not require any adjudication.

3. The first issue to be decided in this appeal is as to whether the Learned CIT(A) is justified in upholding the estimation of net profit at 5% of turnover in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee is an individual engaged in the wholesale trading of cloth business under the name and style of 'M/s Sethia Fashion'. During the course of assessment proceedings, the Learned AO observed that the assessee could not produce the books of accounts and bills and vouchers. Hence he rejected the books of accounts in terms of section 145(3) of the Act and resorted to make an estimate of net profit @ 5% of turnover and made an addition of Rs. 8,39,188/- in the assessment. On first appeal, the assessee stated that the assessee is only a wholesaler in saree business where the margin is generally 1 – 2% of gross turnover. The assessee argued that the Learned AO ought to have brought on record comparable cases before resorting to make an estimate of net profit @ 5% of turnover. It was further pleaded that in the case of Siddhivinyak Sarees assessed by Learned AO in Ward 43(4), Kolkata, the net profit rate was only 0.6%. Moreover, the Learned AO having rejected the books of accounts u/s 145(3) of the Act and resorting to make estimate of net profit @ 5% of turnover, ought to have reduced the net profit returned by the assessee towards the same business income in the sum of Rs. 1,79,021/- in order to avoid double addition. The assessee had declared 1.06% as net profit on turnover. The Learned CIT(A) however, upheld the order of the Learned AO. Aggrieved, the assessee is in appeal before us on the following ground:-

*2. For that the Ld. CIT(A) erred in confirming the estimate of the net profit at 5% in the wholesale cloth business when the profit declared by the assessee was quite fair and reasonable.*

3.2. The Learned AR argued that the Learned CIT(A) did not give any independent finding with regard to the comparable case quoted by the assessee before him inspite of making a passive reference to the same in his appellate order. He prayed for setting aside of this issue to the file of the Learned AO with a direction to verify the comparable cases who are in similar line of businesses and then determine the net profit of the assessee from her wholesale cloth business. In response to this, the Learned DR fairly conceded to the same.

3.3. We have heard the rival submissions. We find that in the aforesaid facts and circumstances, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Learned AO, to verify the comparable cases and determine the net profit of the assessee as there is no past history of the assessee, as it was claimed by the assessee that this asst year being the first year of business existence of assessee. The assessee is directed to file comparable cases before the Learned AO to enable him to make a fair estimate of the net profit of the business of the assessee. Accordingly, the ground no.2 raised by the assessee is allowed for statistical purposes.

4. The next ground to be decided in this appeal is as to whether a sum of Rs. 20,54,709/- towards unsecured loans could be added in the facts and circumstances of the case.

4.1. The brief facts of this issue are that the assessee had declared unsecured loans of Rs. 20,54,709/- in his balance sheet as received from the following six parties :-

( in Rs.)

Kailash Devi Singhi (Kol)	5,02,465
Padam Chand Jain	1,50,986
Priyanka Sethia	2,07,000
Shanti Lal Bhandia (Kol)	2,50,822
Varun Barlota	4,71,718
Vinay Barlota	4,71,718
-----	20,54,709

The assessee filed loan confirmation letters from all the six parties before the Learned AO. The Learned AO issued summons u/s 131 of the Act on all the six persons and out of them, summons could be served only on two persons viz Ms.Prianka Sethia and

Ms. Shanti Lal Bhandia. With regard to four parties, the summons had returned unserved. The Learned AO asked the assessee to produce the loan parties before him which the assessee failed to do. Hence the Learned AO treated the unsecured loans of Rs. 20,54,709/- as unexplained cash credit u/s 68 of the Act. On first appeal, the Learned CIT(A), on verification of the assessment records, found that the assessee had merely filed only loan confirmations before the Learned AO without mentioning the PAN, income tax assessment jurisdiction, bank statements, income tax returns and balance sheet of six parties to verify the genuineness of transactions and creditworthiness of the creditors. The assessee filed the income tax returns and balance sheets of Vinay Barlota, Varun Barlota, Shanti Lal Bhandia and Priyanka Sethia along with loan confirmations from all the parties before the Learned CIT(A). The Learned CIT(A) called for the remand report from the Learned AO. The remand report was obtained from the Learned AO by the Learned CIT(A). Later the Learned CIT(A) held that these documents filed before him are additional evidences and hence the same are not admitted for adjudication. Accordingly, he upheld the addition made by the Learned AO. Aggrieved, the assessee is in appeal before us on the following grounds:-

*3. For that the Ld. CIT(A) erred in confirming the addition of Rs. 20,54,789/- being cash credits by not admitting the evidences filed by the appellant when the credits were genuine, appellant started new business during the year, the details of the cash credits including the PAN of the creditors was available in the Audited Accounts and the subsequent evidences were only supporting evidences.*

*4. For that on the facts and circumstances of the case the Ld. CIT (A) should have admitted the evidences of the cash credits and should have decided the issue on merits of the case.*

4.2. The Learned AR argued that the Learned CIT(A) having admitted the additional evidences filed before him originally had called for a remand report and obtained the same from the Learned AO. He argued that thereafter, it would be unfair on the part of the Learned CIT(A) to state that the additional evidences filed by the assessee are

not admitted. To meet the ends of justice, he prayed for set aside of this issue to the file of the Learned AO , wherein he undertook to produce the parties before the Learned AO for examination. In response to this, the Learned DR argued that the Learned CIT(A) had categorically given a finding that the assessee had not discharged her onus in terms of section 68 of the Act and hence argued that the order passed by the lower authorities does not call for any interference.

4.3. We have heard the rival submissions. We find that the Learned CIT(A) had originally admitted the additional evidences filed by the assessee and had called for a remand report from the Learned AO. Having done so, he ought not to have concluded in his appellate order that the additional evidences filed does not deserve to be admitted. The Learned AR prayed for one more opportunity to be granted to the assessee for production of loan parties before the Learned AO. We find from the facts and circumstances of the case, deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Learned AO, to decide this issue afresh, in accordance with law. The assessee is also directed to produce the parties before the Learned AO for his/ her examination. Accordingly, the grounds 3 & 4 raised by the assessee are allowed for statistical purposes.

5. The last issue to be decided in this appeal is as to whether an addition of Rs. 10,71,021/- could be made in the facts and circumstances of the case.

5.1. The brief facts of this issue are that the Learned AO observed that the assessee had introduced a sum fo Rs. 21,71,021/- in her balancesheet towards capital account. The Learned AO called for the sources of the same and also requested the assessee to produce the bank statements of the assessee together with the balance sheet for the financial year 2005-06. The Learned AO observed that the assessee could not produce any documents. Accordingly, he added the capital introduction figure of Rs. 21,71,021/- as unexplained cash credit u/s 68 of the Act. On first appeal, the assessee stated that the assessee had invested a sum of Rs. 21,00,000/- into the proprietorship

concern out of her own funds which is evident from the audited balance sheet of M/s Sethia Fashion and individual balance sheet of the assessee for the year ending 31.3.2007 relevant to the assessment year under appeal. Further it was argued that the capital introduced is much less than the opening balance of her own capital of Rs. 26,34,893/-. These submissions were forwarded by the Learned CITA to the Learned AO calling for a remand report. In the remand report, the Learned AO stated that from the perusal of the balance sheets of the assessee as on 31.3.2006 and 31.3.2007, it was found that the assessee had got opening capital balance as on 1.4.2006 at Rs. 16,34,893/-. After going through the rejoinder from the assessee to the remand report submitted by the Learned AO, the Learned CIT(A) held that the assessee was able to prove the source only for Rs. 11,00,000/- which were received by cheques from another proprietary concern on four different dates and sustained the balance addition of Rs. 10,71,021/- ( 21,71,021-11,00,000/-) . Aggrieved, the assessee is in appeal before us on the following ground:-

*5. For that the Ld. CIT (A) erred in confirming the addition of Rs. 10,71,721/- being capital introduced as undisclosed income ignoring the explanation of appellant.*

5.2. The Learned AR argued that the benefit of telescoping with the trading addition sustained in ground no. 2 may be given to the assessee with the addition made towards introduction of capital. In response to this, the Learned DR vehemently supported the order of the Learned CIT(A).

5.3. We have heard the rival submissions. We find lot of force in the arguments of the Learned AR requesting for telescoping of the trading addition to be decided by the Learned AO as per our directions in para 3.3 above. We direct the Learned AO to give relief to the extent of trading addition sustained vide para 3.3 above and make an addition for the balance amount. Accordingly, the ground no. 5 raised by the assessee is allowed for statistical purposes.

6. The other grounds raised by the assessee are only general in nature and does not require any adjudication.

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

ORDER PRONOUNCED IN THE OPEN COURT ON 13 -4- 2016

Sd/-

Sd/-

( N.V. Vasudevan, Judicial Member ) (M. Balaganesh, Accountant Member)

Date 13 -4 -2016

Copy of the order forwarded to:-

- 1.. The Appellant/assessee: Smt. Gulab Devi Sethia 43 Dobson Road,  
Howrah 711101.
- 2 The Respondent/department: Income Tax Officer, Ward 48(2)  
3 Govt Place, Kolkata-700001.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

\*\*PRADIP SPS