

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C" KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.2459 & 2483/Kol/2013**  
Assessment Year :2008-09

Jama Das Kothari (HUF) Prop. of Sukhdeodas Jamundadas, Ranchi Road, Purulia-723101 <b>[PAN No.AACHK 4506 M]</b>	V/s.	Income Tax Officer, Ward-3(3), P.O. Purulia, South Lake Road, P.O. Purulia, Pin-723101
ITO Ward-3(3), Income Tax Office, South Lake Road, P.O. & Dit. Purulia, Pin- 723101	V/s.	Jamna Das Kothari (HUF), Ranchi Road, Purulia, Pin-723101
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Arvind Agarwal, Advocate
राजस्व की ओर से/By Respondent	Shri Rajat Kumar Kureel, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	17-04-2017
घोषणा की तारीख/Date of Pronouncement	02-06-2017

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

These are cross-appeal by the assessee as well as Revenue is directed against the common order of Commissioner of Income Tax (Appeals), Asansol dated 19.08.2013. Assessment was framed by JCIT, Raaaaaaange-3, Asansol, u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 03.11.2010 for assessment year 2008-09.

Shri Arvind Agarwal, Ld. Advocate appeared on behalf of assessee and Shri Rajat Kumar Kureel, Ld. Departmental Representative represented on behalf of Revenue.

2. Both the appeals are heard together and are being disposed of by way of common order for the sake of convenience and brevity.

**First we take up assessee's appeal in ITA No.2459/Kol/2013.**

3. Ground No. 1 to 6 are inter-related and therefore being taken up together for the sake of convenience.

The first issue raised by the assessee is that Ld. CIT(A) erred in estimating the profit @ 1.5% of the total turnover.

4. The facts in brief are that assessee is a Hindu Undivided Family and is engaged in wholesale business of cloth. The Assessing Officer during the course of assessment proceedings requested the assessee to furnish the details in respect of several items shown in his financial statement. But the assessee failed to furnish the same and therefore AO disallowed the same as detailed hereunder:-

- i) Sundry creditors for goods 4860626
- ii) Advance from the customers of ₹58,980/-
- iii) Various expenses of ₹4,52,992/-
- iv) Expenses in relation to exempt income of ₹91,893/-
- v) Interest expenses of ₹5,55,579/-

Thus, the Assessing Officer disallowed the above items of sundry creditors, expenses etc., and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that duly audited financial statements along with auditor's report u/s 44AB of the Act were filed along with return of income. Thus, the AO before making any disallowance should have made reference to the audited financial statements as well as analysis with the earlier year's financial statement of assessee. The assessee before Ld. CIT(A) also submitted that the difference is arising between the amount of sundry creditors due to the fact that certain bills were raised at the fag-end of

the financial year which were not entered in its books of account. However, Ld. CIT(A) observed that the assessee failed to produce the books of account and therefore he proceeded to estimate the income on the basis of available information. Thus, Ld. CIT(A) partly allowed assessee's appeal by observing as under:-

*"12. In the situation described above, a fair assessment, in my view is to estimate income at a percentage of turnover. Since power of CIT(A) is co-terminus with that of Assessing Officer and in view of explanation to section 251, I invoke the power to determine income in such manner. The gross profit and net profit disclosed by appellant is as under:-*

A.Y	Turnover	Rate of gross profit	Rate of net profit
2005-06	146394572	2.36%	0.26%
2006-07	148870624	2.56%	0.35%
2007-08	123418019	2.65%	0.44%
2008-09	117814321	2.80%	0.45%

*As correctness and completeness of accounts is unknown pitching estimation closed to the disclosed rate of income in the preceding AY is not fair. Discrepancies were noted by Assessing Officer in regard to customer balance, expenditure details incompleteness etc. if income is pitched close to what is being disclosed, necessary adjustments as warranted under chapter IV-D of Income Tax Act 1961 will not stand effected. Further pitching close to gross profit of preceding acts as an incentive to non production of books of accounts. Hence I am of the view that a fair estimation, which is in no manner high pitched will be to 1.5% of turnover. This figure is considered keeping in mind judicial decisions including State of Kerala vs. C Velukutty (1966) 60 ITR 239 and the facts and circumstances of the case and is considered a balance between underpitched and overpitched estimation. The Assessing Officer is directed to fix income accordingly, subject to directions in paragraphs 14 and 15.*

*13. The decision in regard to disallowance 40(a)(ia) is dealt with next. It is an artificial disallowance based on a technical default. Such disallowance cannot be absorbed in the estimation as above because if two assessee in exactly identical position perform differently in aspect of compliance to a specific provision of the Income tax Act 1961 (here deduction of tax at source under section 194A), his income varies. This is due to the fact that as against real income. Income Tax Act 1961 taxes income computed in the manner stipulated in the Act. Therefore I hold that addition over and above what has been determined above is needed.*

*14. On the disallowance under section 40(a)(ia), I direct the Assessing Officer to make further addition only in respect of those persons to whom interest is credited and from whom appellant has not obtained Form 15G. the forwarding of such Form 15G to CIT is not material to the decision taking cue from the decision in ITO, Ward-2(3), Kolkata vs. M/s Link Consultants Pvt. Ltd. of ITAT 'A' Bench, Kolkata dated 29.11.2011. the Assessing Officer is directed to*

*make verification of record i.e. whether Form 15G received in time in this regard and if received, not to effect any addition.*

*15. It is clarified that deduction under section 80C as allowed in assessment is to granted on income compute din manner specified in paragraph 12 and 14.*

*16. The decision in paragraph 12 disposes of grounds 2a, 2b, 3, 4, 5, 6 and 7 of appeal. The decision in paragraph 14 disposes of grounds 8 and 9. The appeal is partly allowed.”*

Now, being aggrieved by this order of Ld. CIT(A) both assessee and Revenue came in cross-appeal on the following grounds:-

The grounds raised by assessee read as under:-

*“1) For that, in view of facts and circumstances of the case, Id. Commissioner of Income Tax (Appeal), Asansol erred on facts as well as in law in estimating income @ 1.5% of the turnover as per his best judgment without considering the material on record in proper perspective.*

*2) For that, without prejudice to above Ld. Commissioner of Income Tax (Appeal), Asansol erred in law as well as on facts in not appreciating the fact that books of Accounts were duly maintained for the year under appeal and which were also audited by a Chartered Accountant and there was no adverse remark by the auditor.*

*3)For that, without prejudice, Id. Commissioner of Income Tax (Appeal), Asansol failed to consider the explanation that Book of Account for the year were misplaced on account of serious disputes among members of HUF and business of the HUF was ultimately closed in F.Y 2009-2010.*

*4) For that, without prejudice to above, Id. Commissioner of Income Tax (Appeal), Asansol erred on facts as well as in law in estimating income in most arbitrary manner while he himself admitted in the said order that explanation furnished to the queries of Ld. AO is plausible.*

*5) For that, without prejudice to above, estimate of income made @ 1.5% of turnover at Rs.1767214/- e.g. more than 4.2 times of disclosed income at Rs.429331/- (before deduction u/s 80C) can never be called best judgment assessment either in law or on past assessments.*

*6) For that, without prejudice to above, in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) ought to have adjudicated the grounds of appeal adduced before him in favour of the appellant that there is plausible explanations for alleged discrepancies pointed out in the assessment order by the assessing officer.”*

The Revenue has raised per its ground as under:-

*“1. That, Ld. CIT(A), Asansol has erred in law and on facts by allowing the relief of Rs.60,20,070/- disallowances made by the AO on account of difference inclosing and opening balance in liabilities of sundry creditor of goods.”*

6. Before us Ld. AR for the assessee filed two set of paper books which is running pages from 1 to 142 and 1 to 290 respectively and submitted that the income estimated by Ld. CIT(A) is on higher side. It is because the assessee has been declaring his net profit between .26% and .45% in the earlier years. Though the Ld. CIT(A) has estimated the profit @ 1.5% which is highly unreasonable whereas Ld. DR for the Revenue submitted that assessee failed to produce the books of account at the time of assessment proceedings, therefore the addition made by the AO should be sustained. Ld. DR vehemently relied on the order of AO.

7. We have heard rival contentions of the parties and perused the material available on record. The issue in the instant case relates to the income estimated by the Ld. CIT(A) @ 1.5% of the turnover. As per the argument of the Ld.AR that assessee has been declaring income between .26% and .45% in the earlier years. Admittedly, the assessee failed to produce the books of account at the time of assessment. It is also a fact to determine the actual income the books of account play the crucial role. In the absence of books of account, we find that Ld. CIT(A) had to resort to accept to determine the income to the best of his judgment. However, the income in the case of based judgment assessment should be worked out reasonable and scientific manner. As from the submission of Ld. AR we find that income declared in the earlier year is quite less than 1.5% and same was also accepted by Revenue. Considering the facts and totality we are of the view that the income on estimated basis should be .80% to the gross turnover of the assessee. It is because the amount of profit shown by assessee in the earlier years cannot be set aside while determining the income on the basis of best judgment. Therefore after considering the trend of the assessee's business we direct the AO to re-compute the profit @ .80% of the turnover. This ground of assessee's appeal is partly allowed.

7.1 Now coming to the Revenue's appeal. We find that the AO has made the addition on account of difference between the creditors shown by assessee vis-à-vis shown by the respective parties though the assessee has

filed the re-conciliation the difference by stating that certain bills were raised at the fag-end of the year which was accounted for in the subsequent year. In such situation, if the differences are added to the total income of assessee then this will lead to double taxation in the hands of assessee. Therefore, we find that the impugned order passed by Ld. CIT(A) by estimating the income in the aforesaid facts and circumstances is reasonable enough to determine the actual tax liability. Thus, we do not find any infirmity in the order of Ld. CIT(A). Thus appeal of the Revenue is dismissed.

**8. In the result, assessee's appeal stands allowed partly and that of Revenue is dismissed.**

Order pronounced in the open court 02/06/2017

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp, Sr.P.S

दिनांक:- 02/06/2017 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-Jamna Das Kothari (HUF), Prop. of Sukhdeodas Jamunadas  
Ranchi Road, Purulia-723101
2. राजस्व/Revenue-ITO, Ward-3(3), P.O. Purulia, South Lake Road, P.O Purulia,723101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।

