

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI JASON P. BOAZ ACCOUNTANT MEMBER  
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 4488/MUM/2013  
(Assessment Year : 2008-09)

Usha Ashok Kumar Hegde,  
Hotel Garuda Bar & restaurant,  
Opp. Telephone Exchange, Ladi Naka,  
Ambarnath  
PAN:ABHPH 8068F  
Vs.

... Appellant

The Income Tax Officer, Ward 2(3),  
Mohan Pride, Near Poddar School,  
Waile Nagar, Khadakpada,  
Kalyan(W) 421 301

.... Respondent

Appellant by : None  
Respondent by : Shri Sumit Kumar

Date of hearing : 27/01/2016  
Date of pronouncement : 29/01/2016

**ORDER**

**PER JASON P. BOAZ, A.M:**

This appeal by the assessee is directed against the order of the CIT(Appeal)-II, Thane dated 2/5/2013 for assessment year 2008-09.

2. This case was fixed for hearing on atleast to occasions from 17/9/2014 till today i.e. 27/1/2016 and has been adjourned by the Bench at the instance of the Ld. Representative for the assessee six times. Today i.e. 27/01/2016 when the case was called out for hearing,

none was present on behalf of the assessee, but the Ld. Departmental Representative for the Revenue was present. In the circumstances as laid out above, it appears to us that the assessee is not interested in pursuing this appeal. This appeal is, therefore, disposed off with the help of the Ld. Departmental Representative for the Revenue and the material on record.

3. In the facts of the case, briefly, are as under:-

3.1 The assessee, Proprietor of Hotel Garuda Bar & Restaurant, filed her return of income for assessment year 2008-09 on 27/2/2009 declaring income of Rs.63,441/-. The return was processed under section 143(1) of the Income Tax Act, 1961 ( in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 16/12/2010, wherein the income of the assessee was assessed at Rs.4,94,754/- in view of the following additions:-

|  |   |                |
|--|---|----------------|
| (i) Addition on account of low N.P   | - | Rs. 3,47,040/- |
| (ii) Addition on account of undisclosed<br>S.B. Interest of minor child u/s.68 | - | Rs. 84,273/-   |

3.2 Aggrieved by the order of assessment for assessment year 2008-09 dated 16/12/2010, the assessee preferred an appeal before the CIT(Appeals)-II, Thane. The Ld. CIT(A) disposed off the appeal vide order dated 2/5/2013 allowing the assessee partial relief.

4. Being aggrieved by the order of the CIT(Appeals)-II, Thane dated 2/5/2013 for assessment year 2008-09, the assessee has preferred this appeal before the Tribunal raising the following grounds:-

*"1. On the facts and in the circumstances of the case and in law the learned AO has erred passing a order u/ s. 143(3) based on a non est return of income in case of the appellant and as such the assessment order is ab initio void and bad in law.*

*2. On the facts and in the circumstances of the case and in law the leaned AO has erred in not applying the provisions of section 44AF to the appellant who was engaged in retail trade and the learned CIT has erred in confirming the action of the Assessing Officer.*

*3. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in confirming the action of AO in assessing the appellant at a net profit rate of 12% on the sales of Rs. 3420689/- from retail trade and not at the rate of 5% as provided in section 44AF.*

*4. On the facts and in the circumstances of the case and in law the learned AO has erred in assessing Rs. 84273/- on account of interest earned by the daughter of the appellant in the hands of the appellant though the daughter had attended majority on 1.4.2008 Le the first day of AY 2008-09.*

*5. Appellant craves leave to add, delete or substitute any of the above Ground of Appeal."*

5. The **Grounds raised at S.No.1 and5** of the assessee's appeal being general in nature, no adjudication is called for thereon.

6.1 In the **Grounds at S.No.2 and 3**(supra), the assessee assails the order of the Ld. CIT(A) for confirming the action of the Assessing Officer in assessing her at a net profit of 12% on sales rather than @ 5% as provided in section 44AF of the Act as applicable to the assessee.

6.2.1 In this regard we have heard the Ld. Departmental Representative for the Revenue in support of the impugned order of the Ld. CIT(A) on this issue and perused and carefully considered the material on record. In the impugned order, after considering the submissions of the assessee, the Ld. CIT(A) at para 4.1 and 4.1.1., thereof has held as under:-

*"4.1 As regards applicability of 5% net profit rate on total turnover of Rs. 34,20,689/- u/s. 44AF of the Act as against net profit rate of 12% applied by the A.O., I find that the case of appellant is not covered u/s. 44AF of the Act because the business of appellant is not purely trading in nature. It involves consumptions of various items and preparation of food as per the requirements of the clients and hence it is not simply a trading of the items. It is a fact that the profit margin in the retail business of the liquor particularly served in the Restaurant and also on the food served in Restaurant is very high. The A.O has applied net profit rate of 12% considering net profit rate disclosed in earlier three years which is as under:-*

|              |   |        |
|--------------|---|--------|
| A.Y. 2005-06 | : | 12.39% |
| A.Y. 2006-07 | : | 12.45% |
| A.Y. 2007-08 | : | 13.03% |

*4.1.1 Since the net profit rate has been applied by A.O considering the history of the appellant herself, in my considered view, the decision of A.O. is well reasoned and well founded. Therefore, I confirm the net profit rate of 12% resulting into an addition of Rs.3,47,040/-. Accordingly, appellant does not deserve any relief on this account and hence fails in respect of Ground No.2.*

6.2.2 We find, as per the material on record and the submissions of the Ld. Departmental Representative for the Revenue that the assessee has failed to controvert with evidence the findings of the Ld. CIT(A) in the impugned order confirming the addition of Rs.3,47,040/- by the Assessing Officer on application of profit @ 12.0% on the basis of the profits declared by the last three years which are from 12.39% to 13.03%. We consequently dismiss Ground Nos. 2 and 3 raised by the assessee.

7.1 In **Ground No.4** the assessee assails the findings of the authorities below in assessing the bank interest of Rs.84,273/- earned by the assessee's daughter on the ground that the said daughter had attained majority on 1/4/2008, i.e. first day of assessment year 2008-09.

7.2.1 In this regard, we have heard the Ld. Departmental Representative for the Revenue in support of the impugned order of Ld. CIT(A) and considered the material on record. In the impugned order, the Ld.CIT(A) after considering the averments of the assessee has held as under at para 4.2, thereof:-

*"4.2. In respect of clubbing of interest income of minor at Rs. 84,273/-, I find that there is no dispute about quantum of income. Since the daughter of appellant became major only on 24/03/2008, the income accruing to her from 1st April, 2007 to 24th March,2008 was pertaining to the period of her minority. Therefore, the same is required to be clubbed u/s. 64 in the hands of appellant. The A.O. is directed accordingly to work out the addition and allow consequential relief' Appellant, thus, succeeds partly in respect of Ground No. 3."*

7.2.2. We find from the submissions of the Ld. Departmental Representative for the Revenue and material on record, that the assessee has failed to controvert with any evidence the findings of the Ld. CIT(A) in the impugned order on the issue of clubbing of bank interest earned by the minor daughter of the assessee for the relevant period in the year under consideration in the hands of the assessee. Consequently, we dismiss ground No.4 raised by the assessee.

8. In the result, the assessee's appeal for assessment year 2008-09 is dismissed.

Order pronounced in the open court on 29/01/2016

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER  
Mumbai, Dated 29/01/2016

Sd/-  
(JASON P. BOAZ)  
ACCOUNTANT MEMBER

Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**