

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2796, 2797 & 2798/Mds/2016

निर्धारण वर्ष / Assessment Years : 2011-12, 2012-13 & 2013-14

M/s SM Feeds & Farms India

Pvt. Ltd.,

"Lucky Building",

No.938, 12th Cross Street,

MKB Nagar, Vyasarpadi,

Chennai - 600 039.

v.

The Deputy Commissioner of
Income Tax,

Company Range 6(2),

Chennai - 600 039.

PAN : AANCS 2321 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Ravi, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing : 18.10.2016

घोषणा की तारीख/Date of Pronouncement : 25.11.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-15, Chennai, dated 22.09.2016 and pertain to assessment years 2011-12, 2012-13 and 2013-14.

2. The only issue arises for consideration is estimation of profit.
3. Shri K. Ravi, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of manufacturing and sale of poultry feed and rearing and marketing of chicks. During the course of survey operation on 23.12.2013, it was found that the assessee claimed purchases from non-existent entities and subsequently, while recording statement, the assessee admitted that the purchases were booked in the name of non-existent entities for the purpose of disclosing more turnover to banks and financial institutions. Accordingly, the Assessing Officer rejected the books and estimated the income at 10% of the fictitious sales. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the average profit ratio of the assessee is 4 to 6%. For the assessment year 2012-13, the net profit shown was 4%. For assessment year the net profit was 6%. However, for the assessment year 2010-11, it was 4%. After considering all these, according to the Ld. counsel, the CIT(Appeals) estimated the profit at 7.68% for the assessment years 2012-13 and 2013-14. However, for the assessment year 2011-12, he accepted the profit returned by the assessee.

4. The Ld.counsel for the assessee further submitted that the profit was estimated only on the fictitious sales by both the authorities below. If the purchase was admittedly bogus, then the the sales would also be bogus. Therefore, the estimation cannot be made on the fictitious sales. Therefore, according to the Ld. counsel, the Assessing Officer is not justified in estimating the gross profit on fictitious sales. On a query from the Bench, when the assessee itself admitted that there are bogus purchases, and the book result was inflated for disclosing higher turnover, what is wrong in rejecting the books and estimating the gross profit? The Ld.counsel submitted that he would not have any objection to estimate the reasonable gross profit and the turnover. The turnover, according to the Ld. counsel, has to be taken excluding the bogus purchase and fictitious sales.

5. On the contrary, Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the assessee admittedly inflated the purchases by claiming that purchases were made from non-existent entities. Therefore, the Assessing Officer estimated the profit at 10% for assessment year 2012-13 and for assessment year 2013-14, he estimated the profit at 9.4%. The CIT(Appeals), however,

determined the gross profit at 7.68% for all the three years. Even though there was increase of profit for the assessment years 2012-13 and 2013-14, the profit declared by the assessee for assessment year 2011-12 was accepted. According to the Ld. D.R., the income was rightly estimated by the lower authorities, therefore, no interference is called for.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found that the assessee inflated the purchases by claiming that the purchases were made by non-existent entities. This fact of inflating the purchases is not in dispute. Therefore, the books maintained by the assessee would not reflect the correct business transaction and the correct profit may not be deduced from the book maintained by the assessee. Therefore, the Assessing Officer has rightly rejected the books and estimated the gross profit.

7. Now the only dispute is reasonableness of the gross profit estimated by the Assessing Officer and the CIT(Appeals). Though the CIT(Appeals) estimated the gross profit at 7.68%, the assessee claims that 7.68% is highly excessive, therefore, it has to be reasonably estimated. The average gross profit disclosed by the

assessee for the earlier assessment year is 4 to 6%. From the order of the CIT(Appeals) it appears that the CIT(Appeals) has considered the gross profit ratio for the assessment years 2008-09, 2009-10 and 2010-11 and arrived at the average gross profit for three years at 7.68%. The profit was estimated only on the fictitious sales shown by the assessee. This Tribunal is of the considered opinion that for fictitious sales, the assessee has also booked fictitious purchase in the books. The fictitious purchase effected in the books would definitely decrease the profit or the turnover of the assessee considerably. Therefore, for the purpose of estimating the reasonable profit, the entire turnover including the fictitious purchases and fictitious sales has to be taken into consideration. In other words, the bogus purchases and sales need not be excluded for the purpose of determining the total turnover. By taking into consideration of the earlier year profit which is 4 to 6%, this Tribunal is of the considered opinion that estimation of gross profit at 5.5% would meet the ends of justice.

8. In view of the admitted fact that there are bogus purchases and bogus sales and the books does not reflect the correct income of the assessee, the bogus purchases and fictitious sales could not

be determined, therefore, estimation of 5.5% on the entire turnover including the bogus purchases and fictitious sales would meet the ends of justice. Accordingly, the orders of the lower authorities are modified and the Assessing Officer is directed to estimate the gross profit at 5.5% on the turnover without excluding the bogus purchases and fictitious sales accepted by the assessee.

9. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced on 25th November, 2016 at Chennai.

sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 25th November, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai
4. Principal CIT-6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.