

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-3", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	ITA No.741/Del/2015	
	A.Y. : 2011-12	
SH. IMRAN SA-38, NEW SABJI MANDI, SAHIBABAD, GHAZIABAD (PAN: AASPI9611B)	VS.	ITO, WARD 1(3), NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Dr. Sh. Rakesh Gupta, Adv. & Sh.  
Somil Agarwal, Adv.  
Assessee by : Sh. FR Meena, SR. DR

**Date of Hearing : 24-08-2016**

**Date of Order : 16-09-2016**

**ORDER**

**PER H.S. SIDHU : JM**

The Assessee has filed the present appeal against the impugned order dated 11/12/2014 passed by the Ld. Commissioner of Income Tax (Appeals), Ghaziabad on the following grounds:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.30,73,334/- fully as made by Ld. AO on the basis of alleged turnover and has further erred in sustaining the addition to the extent of Rs.24,61,867/- in this regard, more so when turnover of Rs.3,07,73,348/- does not pertain to the assessee in any manner and impugned addition has been made by recording incorrect facts and findings and without bringing any adverse material on and without considering/appreciating the submissions of assessee.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not considering the fact that assessee is carrying business of the retail trade as well as Kachacha Arhartiya of fruit and vegetable on commission basis and has further erred in not allowing expenses of Rs.7,69,334/- paid to Mandi Samiti Shulka and Vikas Cess and Rs.92,320/- paid for Miscellaneous expenses and that too without considering the facts and

circumstances of the case and without considering/appreciating the submissions of assessee.

3. That in any case and any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned addition on the basis of alleged turnover and framing the impugned assessment order is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.
4. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging the interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.
5. That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above' grounds are without prejudice to each other.

2. The facts in brief are that assessee had filed return of income on 30.7.2011 declaring income of Rs. 198830/-. The case was selected for scrutiny through CASS. In this case notices u/s. 143(2) and 142(1) were issued on 24.9.2012 and 4.12.2012 respectively. The assessee is dealing in retail trading of Tomato etc. under the name and style of M/s Imran Tomato Company. During the assessment the assessee had shown gross receipts of Rs. 2475290/- and declared NP rate @8% under presumptive income u/s. 44AD as compared to the FY 2009-10 @4.70%. The AO observed that the assessee had made sale of Rs. 3,07,73,348/- during FY 2010-11, therefore, the assessee was asked to show cause why NP @10% of total sales of Rs. 3,07,73,348/- might not be applied and he was also asked to furnish all the books of accounts maintained by the assessee alongwith the vouchers for expenses. In response, the assessee had submitted revised sales on the basis of the certificate issued by Krishi Utpadan Mandi Samiti, Ghaziabad and the basis of turnover on own account trading account. The assessee had also produced photocopy of day today sale and purchase accounts maintained by the Krishi Utpadan Mandi Samiti. Besides, the Krishi Utpadan Mandi

Samiti vide its letter dated 13.2.2014 had furnished the details and purchases of produces made by the assessee. But there was no mention in the letter that the assessee had made sales of products on commission basis. Thereafter AO held the turnover of Rs. 3,07,73,348/- of the assessee of the year under consideration and applied NP rate of 10% and accordingly made an addition of Rs. 30,73,334/- by completing the assessment at Rs. 32,72,164/- u/s. 143(3) of the I.T. Act, 1961 vide his order dated 28.2.2014.

3. Being aggrieved with the aforesaid order, assessee appealed before the Ld. CIT(A), who vide impugned order dated 28.2.2014 has partly allowed the appeal for statistical purposes and applied NP rate @8% instead of 10%.

4. Now the Assessee is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. Counsel of the Assessee has stated that Ld. CIT(A) has reduced the NP rate from 10% to 8% on estimation basis, which is not sustainable in the eyes of law. He further stated that the said applied rate of 8% is still at higher side which may be reduced to a reasonable rate.

6. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which may please be upheld.

7. I have heard both parties and perused and considered the relevant records available with us especially the impugned order passed by the Ld. CIT(A). I find that Ld. First Appellate Authority has adjudicated the issue in dispute vide para no. 5 to 6 at pages 9 to 10 in his impugned order. The said relevant paras of the impugned order are reproduced as under:-

*"5. Having considered facts of the case, submission of the appellant and assessment order of the AO, the appeal is decided as under:*

*5.1 It is seen that the assessee had cleared gross receipt of Rs. 2475290/- and declared NP @8%. However, on inquiries it was found that turnover of Rs. 30773348/- had not been disclosed by the assessee. The AO confronted this fact to assessee and asked him to show cause why NP of 10% should not estimated on undisclosed sales of Rs. 30773348/- and why an addition of Rs. 30,77,334/- be not made in the income of the assessee. On being so confronted the assessee came with a story that he was doing business as trader as well as on*

*commission basis. However, he did not submit any details of his sales / purchases of trading turnover or commission turnover. The assessee submitted that he earned his commission income of Rs. 61546/- @3% after deducting various expenses. In view of these facts, the AO estimated NP of 10% on turnover of Rs. 3,07,73,348/- and addition fo Rs. 30,73,334/-.*

*5.2 During appellate proceedings, the appellant had tried at length to explain what commission income is. However, fact remains that he had not disclosed these transactions in return of income and neither at assessment nor at appeal stage did he submit any cogent evidence that these transactions relate to commission income. These arguments therefore lack merit. However, I find no justification for applying NP rate of 10% as against declared NP rate of 8%. In my considered view NP rate of 8% instead of 10% would be justified at this is the NP Rate of disclosed turnover. Thus, applying NP rate of 8%, the addition is sustained to the extent of Rs. 24,61,867/- and appellant gets a relief of Rs. 6,11,467/-. The main issue having been decided thus, the grounds of appeal are not adjudicated separately.*

*6. In the result, the appeal is partly allowed for statistical purposes.”*

7.1 After going through the aforesaid order passed by the Ld. CIT(A) on the issue in dispute, I find that assessee had cleared gross receipt of Rs. 2475290/- and declared NP @8%. However, on inquiries AO found that turnover of Rs. 30773348/- had not been disclosed by the assessee. The AO confronted this fact to assessee and asked him to show cause why NP of 10% should not be estimated on undisclosed sales of Rs. 30773348/- and why an addition of Rs. 30,77,334/- be not made in the income of the assessee. On being so confronted the assessee stated that he was doing business as trader as well as on commission basis. However, he did not submit any details of his sales / purchases of trading turnover or commission turnover before the AO. The assessee submitted that he earned his commission income of Rs. 61,546/- @3% after deducting various expenses. Therefore, the AO estimated NP of 10% on turnover of Rs. 3,07,73,348/- and made the addition of Rs. 30,73,334/-. I further find that assessee had not disclosed these transactions in return of income and neither at assessment nor at appellate stage did he submit any cogent evidence that these transactions relate to commission income. Therefore, Ld. CIT(A) applied NP rate of

8% instead of 10%, which is quite reasonable and justifiable and rightly sustained the addition to the extent of Rs. 24,61,867/- and accordingly, the assessee gets a relief of Rs. 6,11,467/-, which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and accordingly, the appeal of the Assessee is dismissed.

8. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the Open Court on 16/09/2016.

SD/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 16/09/2016*

**“SRBHATNAGAR”  
Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches