

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.878/Kol/2015

(निर्धारणवर्ष / Assessment Year: 2008-09

Piyush Kanti Roy 30, Bonamali Banerjee Road, Kolkata – 700082.	Vs.	I.T.O, Ward – 33(4), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ACRPR 1426 L		
(APPELLANT)	..	(RESPONDENT)

Appellant by

: None.

Respondent by

:Shri Kalyan Nath, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **04/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **04/10/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2008-09, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–9, Kolkata, in Appeal No.06/CIT(A)-9/Wd-33(4)/2014-05/Kol, dated 26.02.2015, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 30.12.2010.

2. At the time of hearing, none appeared on behalf of the assessee, in spite of issuance of notice for the hearing and Id DR was present for the respondent Revenue. In the absence of any appearance by the assessee, the appeal is being disposed off ex-parte qua the appellant, after hearing Id DR on merits in terms of Rule 24 of the Income Tax Appellate Tribunal Rules, 1963.

3. The grounds of appeal raised by the assessee reads as under:

“1. That on the fact and circumstances of the Case the Learned C.I.T (A) was not justified in holding that assessment made on the assessee was correctly made determining the net profit at Rs.49,90,285/-.

2. That on the fact and circumstances of the Case the Learned C.I.T(A) was not justified in holding 5% of the Gross receipts as per provision u/s 44AF of the Income Tax Act.

3. That on the fact and circumstances of the Case the Learned C.I.T(A) was not justified in confirming the conclusion of Assessing officer that no books of accounts are maintained though accounts are audited u/s 44AB of the Income Tax Act.

4. That on the fact and circumstances of the Case the Learned C.I.T(A) was not justified in confirming the addition by A.O doubting the accuracy and determination of income as per the audited Financial statements which is on the basis of Books of Accounts.

5. That on the fact and circumstances C.I.T(A) erred in confirming the decision of A.O for addition made u/s 44AF is contrary to the provision of law and as well as on the fact of the case.

6. That the assessee craves leave to adduce or later or amend grounds at the time of hearing.”

4. Although, in this appeal, the assessee has raised multiple grounds of appeal we note that the main grievance of the assessee is against the orders of the Id. CIT(A) in confirming the actions of the Assessing Officer estimating net profit at the rate of 5%.

5. The brief facts qua the issue are that the assessee has filed his return of income for the Assessment Year 2008-09 declaring a total income of Rs.3,41,730/-. The assessee's return was processed u/s 143(1) on 16.02.2010 and the Assessing Officer has completed the assessment by making addition at the rate of 5% of gross receipts of the assessee. The assessee is engaged in trading business of Embroidery Machinery. During the assessment proceedings, the assessee did not

submit the books of account, bank statement, purchase details, expenses details and other documents before the AO. However, the assessee submitted tax audit report before the AO. Since the assessee did not produce before the AO, the books of account, bank statement, purchase details, sales details, expenses details and other documents, therefore, the Assessing Officer rejected the assessee's claim by invoking provisions of section 145(3) of the Act and estimated the net profit at the rate of 5% of the gross receipt under the provision of section 44AF of the I.T. Act. The Assessing Officer noted that although the gross receipt of the assessee is above 40 lakhs but a reference to the section 44AF is applied to estimate the income, where no books of accounts are maintained. The Assessing Officer also noted that assessee was not maintaining books of accounts because after sending several notices to the assessee, no any books of accounts, vouchers, bills etc. were produced. Therefore, the Assessing Officer estimated the net profit @5% on gross receipt of Rs.21,33,40,385/- at Rs.1,06,67,019/-.

5. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(A) who has confirmed the addition made by the Assessing Officer. The Id. CIT(A) observed that in assessee's case under consideration, books of accounts were audited in his case as required u/s 44AB of the Income Tax Act. Therefore, it is expected from the assessee that the assessee should maintain proper books of accounts, vouchers and documents. The Id. CIT(A) during the appellate proceedings, asked for remand report from Assessing Officer and after considering the remand report as produced by Assessing Officer, the Id. CIT(A) noted that assessee was dealing in trading of embroidery machines and that to the business was done only for one year. No books of account and bills/vouchers of purchases/sale/expenses were produced before the Assessing Officer for

verification. The Id CIT(A) also noted that business activity was shown for the year under consideration only and not for the previous year or for the subsequent year. Therefore, in the absence of books of accounts/supporting documents, the Id. CIT(A) confirmed the addition made by the Assessing Officer @5% on the gross receipts.

6. The Id. DR for the Revenue has submitted that since the assessee did not produce books of accounts and bills/vouchers of purchases/sales/expenses etc. The assessee neither produced books of accounts before AO nor during the appellate proceedings before CIT(A), therefore books of accounts, bank statements, purchase/sales details and expenses could not get verified. Therefore, Assessing Officer was reasonably estimated the net profit at the rate of 5% which is reasonable considering the business scenario of assessee.

7. Having heard the Id. DR for the Revenue, we are of the view that the assessee did not submit any books of accounts, bills, vouchers of purchases/sales/expenses before the Assessing Officer for verification. The assessee claimed that there was audit report from the qualified auditor, but the Assessing Officer could not verify the audit report because the assessee did not submit the books of accounts, bill, voucher etc. Based on the tax audit report alone, it was not possible to complete the scrutiny assessment, because figures in the tax audit report are verified with the purchase invoices, sales invoices, bank statements, expenses bills and vouchers. In the scrutiny assessment u/s 143(3), the Assessing Officer has right to verify the bills, vouchers of purchases, sales, expenses with the audit report as submitted by the assessee u/s 44AB of the Act. No doubt, the audit report u/s44AB is required for scrutiny assessment but it does not serve the entire purpose of scrutiny u/s 143(3)

of the Act unless it is verified with the supporting sales/purchase invoices, bank statement, expenses vouchers and other evidences. Therefore, we are of the view that the profit estimated by the Assessing Officer and confirmed by the Id. CIT(A) at the rate of 5% is reasonable and therefore, we confirm the order passed by the Id. CIT(A).

8. In the result, the appeal filed by the assessee, is dismissed.

Order pronounced in the open court on this **04/10/2017**.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated **04/10/2017**
RS,SPS

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – Piyush Kanti Roy
2. प्रत्यर्थी/ The Respondent-I.T.O, Ward – 33(4), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.