

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 1008/Kol/2015
Assessment Year: 2010-11

Jairam Distributors.....Appellant
10A, Lenin Sarani
P.O. Mullickpara
Dist. Hooghly - 712 203
[PAN : AAACU 3732 E]

Additional Commissioner of Income Tax, Circle-1, Hooghly.....Respondent
Rupmati Mahal
Khadinamore, Chinsurah
Hooghly - 712 102

Appearances by:

Shri V.N. Datta, Advocate, appeared on behalf of the assessee.

Shri Sallong Yaden, Addl. CIT, appearing on behalf of the Revenue.

Date of concluding the hearing : August 24, 2017

Date of pronouncing the order : October 31, 2017

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-6, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 09/05/2013, for the Assessment Year 2010-11, on the following grounds:-

- "1. For that the confirming the assessment order is opposed to requirement of law and is neither tenable in law nor in facts.*
- 2. For that in confirming the determination of income at Rs.50,41,405/- is opposed to requirement of law, unjustified and in neither tenable in law nor in facts.*

3. *For that the CIT (A) erred in confirming the determination of GP rate which is made on wrong notion, misconceived and misconstrued.*

4. *For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal.”*

2. The assessee is a partnership firm and is in the business of wholesale trading in medicine. It filed its return of income on 21/09/2010, declaring total income at Rs.24,18,623/-. The Assessing Officer rejected the books of account and estimated the income in his order passed u/s 144 of the Act. Aggrieved, the assessee carried the matter in appeal without success.

2.1. Further aggrieved, the assessee is before us.

3. After hearing rival contentions, we find that the assessee has not disputed the actions of the Assessing Officer in rejection the books of account and thereafter passing an order u/s 144 of the Act. The only grievance is that the rate of gross profit is high. The assessee gives a comparative chart of the gross profit and the net profit declared by it for the Assessment Year 2007-08 to 2011-12. The same is as follows:- P.T.O.

Asst year	Turnover	Gross Profit	GP rate in%	Net Profit	NP rate in%
2007-08 Assessment completed u/s 143 (3) of the Act. Order is enclosed for your perusal	14,21,27,385/-	42,92,247/- No addition made in the trading account.	3.02	13,99,880/- Only addition made of Total Rs.1,68,175 /- resulting the Net Profit at Rs.15,68,055/-	0.98 After addition in the Net Profit the NP rate would be 1.1
2008-09	17,18,77,831/-	56,31,249/-	3.28	22,76,596/-	1.32
2009-10	20,61,50,143/-	75,43,531/-	3.66	29,38,677/-	1.42
2010-11	24,16,42,871/-	87,40,190/-	3.62	35,31,206/-	1.46
2011-12	28,65,42,256/-	91,03,013/-	3.18	39,25,969/-	1.37

3.1. The Assessing Officer has taken a comparative case of “M/s. Economic Medial Stores” and applied the GP Rate. The Id. First Appellate Authority has at para 5, of his order, held as follows:-

“5.0 Appellant's submission and facts available on record is carefully considered. In this survey u/s, 133A was done during the year. As has been pointed out by A.O. in his order, during the course of survey no books of accounts were found. Further post survey in-spite of issue of summons, no books of accounts were ever produced. Even during the course of assessment proceeding in-spite of repeated opportunity granted, as has been highlight by A.O. in his order, no compliance was ever made to A.O.'s notices. In view of the above A.O. had no other alternative other than carrying out best judgment assessment under section 144 of the I.T. Act., as per provision of the section 145(3) of the I.T. Act. As has been correctly cited by

A.O., Hon'ble S.C. in the case of Kachewala Gems Vs. JCIT (2007) 158 Taxmann 71(SC) has held that which carrying out best judgment assessment certain degree of guess work is involved.

Appellant's claim that in such eventuality, assessee's profit from earlier year needs to be taken, is without any basis as during Survey & post survey it was found that regular books of accounts were not maintained. Even the assessee was not in a position to produce the books post surveyor even during assessment. Under such circumstances, assessee's accounts are completely unreliable and cannot be the basis for accepting the extremely low profit shown in his business for all the years. On the other hand A.O had taken the profit of a person carrying out similar business, having almost similar turnover, but showing much higher profit. Other than stating in general terms, nothing specific has been stated by assessee to explain why the extremely low profit shown by it than from a comparable case should be accepted especially when no books/ and other supporting evidences were found during surveyor even produced during assessment.

In view of the above it is held the A.O. had correctly determined income during the year by completing assessment u/s. 144 in the manner laid down in section 145(3) of the I.T. Act."

4. We have no ground or reason to interfere with these finding of the Revenue Authorities. When the assessee does not maintain proper books of account, we see no reason as to why the percentage of profits declared in

the earlier Assessment Years, should form the guidelines for determination of the profits of this year. The fact that the books account cannot be relied upon is not disputed. The assessee has not submitted as to why the comparable taken by the Assessing Officer i.e., "M/s. Economic Medical Stores" is not a correct comparable. Hence, we are unable to reject this comparable. Under these circumstances, we uphold the order of the Id. First Appellate Authority and dismiss this appeal of the assessee.

5. In the result, appeal of the assessee is dismissed.

Kolkata, the 31st day of October, 2017.

Sd/-

[S.S. Viswanethra Ravi]
 Judicial Member

Sd/-

[J. Sudhakar Reddy]
 Accountant Member

Dated : 31.10.2017
 {SC SPS}

Copy of the order forwarded to:

1. Jairam Distributors
10A, Lenin Sarani
P.O. Mullickpara
Dist. Hooghly - 712 203

2. Additional Commissioner of Income Tax, Circle-1, Hooghly
Rupmati Mahal
Khadinamore, Chinsurah
Hooghly - 712 102

3. CIT(A)-
 4. CIT- ,
 5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary

Head of Office/ D.D.O. ITAT, Kolkata Benches