

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri P. M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

I.T.A No.1598/Kol/2014
(Assessment Year: 2010-11)

ITO, Wd-31(1), Kolkata

Appellant

Vs

M/s. Gita Enterprises
[PAN: AADFG 9504 C]

Respondent

For the Appellant : Shri Sallong Yaden, Addl. CIT
For the Respondent : Shri U. Dasgupta, Advocate

Date of hearing : 31.08.2017
Date of pronouncement : 08.11.2017

ORDER

Shri S.S. Viswanethra Ravi, JM:

This appeal filed by the Revenue against the order dated 28.05.2014 passed by the Commissioner of Income Tax (Appeals)-XIX, Kolkata for the assessment year 2010-11.

2. The only issue is to be decided as to whether the CIT(A) is justified in adopting the net profit at 8% as against 22.57% made by the AO in the facts and circumstances of the case.

3. The brief facts of the case are that assessee is a firm and engaged in the business of supply of hard stone to Indian Railway for the year under consideration. The assessee filed his return of income declaring total income of Rs.19,38,235/- and under scrutiny the AO determined income of the assessee at Rs.1,43,62,047/- inter alia estimating net profit on turnover, disallowances on account of loading charges, unloading expenses, remuneration, sales tax and

undisclosed assets vide its order dated 26/03/2013 u/s 144 read with section 143(3) of the Act.

4. Aggrieved, the assessee challenged the same before the CIT(A). The CIT(A) held that the AO was wrong in making disallowances as well as estimating net profit on turnover. Accordingly, the CIT(A) held that basing on and comparing net profit percentage for A.Y 2005-06 to 2009-10 directed the AO to adopt net profit at 8% and deleted the additions made by the AO. The relevant portion of which is reproduced hereinbelow:

"4.2 I have perused the assessment order and the counter submission of the appellant with regard to the pertinent issue which involve two aspects as under:

(a) Whether the AO can made additions on the several items as discussed (supra) even when he has ultimately rejected the books of account of the assessee and proceeded to estimate the Net Profit at 22.5% as against what was declared by the appellant at 5.7% of the gross turnover and

(b) the basis of estimating the Net Profit @ 22.5% of the gross turnover.

With respect to (a) in my opinion, based on the deliberations(supra), the AO cannot make further additions when he has finally decided that the appellant had earned a Net Profit of 22.5% of the turnover since the Net Profit is arrived at after considering all expenses. Therefore, the further disallowance of expenses as per the account of the appellant does not stand to any logical merit.

With respect to (b) whether the Net Profit estimated by the AO is reasonable or not, in my opinion, I find that the AO has not brought on record that the appellant actually earned a Net Profit @22.5% of the turnover whereas the appellant has shown a Net Profit rate at 5.7% which is not a matter of dispute by the AO. The appellant is performing the job of a Railway contractor whereby the AO has not brought on record with any clinching evidence that similar contractors have garnered a profit rate as deemed by him to justify the addition made by him @22.5% of the reported turnover. Additions made on conjectures are liable to be deleted. As has been held in the case of Dhakeswari Cotton Mills Ltd. v. CIT[1954] 26 ITR 775 (SC), Assessing Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 143(3). In this context I find that estimate, if resorted to, has to be based on some reliable evidence with a reliable data base. The AO has not spelt out as how he has arrived at 22.5% of the turnover in assessing the income of the appellant. In the absence of such finding, I find that the assessment done by the AO is based on no facts and circumstances, for which I am not in a position to endorse his action. Under the circumstances, for which I am not in a position to endorse his action. Under the circumstances, since it is a known fact that the contractors in this line of business earn a Net Profit, ranging anything between approximately 5 to 8 per cent of the turnover and never to the tune of 22.5% as alleged by the AO, in my opinion, I feel that it is only fair and proper to estimate the net profit @8% of the turnover for meeting the ends of justice, considering the entire facts and circumstances, for which the AR of the appellant is also in agreement during the appellate proceeding. As per records, the appellant's NP percentage is 3.07% for the AY 2005-06, 3.20% for the AY 2006-07, 3.02% for the AY 2007-08, 3.85% for the AY 2008-09 and 3.85% for the AY 2009-10. The appellant's NP percentage is 5.7% for the year under consideration. Considering the

trend, the AO is directed to adopt the Net Profit @8% of the turnover and assess his income accordingly, subject to allowability of interest on partner's capital and remuneration to working partners as claimed. As a consequence, the remaining grounds of appeal do not require any adjudication since final assessment is to be done on the estimation of Net Profit as discussed above and no further issue emanates therefrom. As a result, all additions made by the AO stand deleted subject to the estimate of income as mentioned above."

5. Aggrieved the revenue is before us. The Id. DR submits that the AO rightly made disallowances on proportionate basis and determined net profit on 22.5% by rejecting the books of accounts and relied on the order of the AO. The Id. AR submits that the AO cannot make disallowances and estimate the profit on turnover at the same time. The Id. CIT(A) considered the percentage of net profit of earlier years basing on which the CIT(A) determined the net profit at 8%. The Id. AR also submits that the assessee did not file any appeal on the said finding of the CIT(A).

6. Heard both and perused the materials available on record. It is observed from the assessment order that the AO made additions on many accounts as well as by rejecting the books of accounts estimated net profit at 22.57%. The CIT(A) observed that the AO failed to bring on record to show that similar contractors have earned profit at the rate of 22.57% without any basis and such estimate on turnover which is not maintainable. In our opinion, as could be seen from the order of CIT(A), the appellant-revenue accepted the percentages of net profit for A.Y 2005-06 to 2009-10 at 3.07%, 3.20%, 3.02%, 3.85%, 3.85% respectively. We also note that the assessee has shown net profit at the rate of 5.7% for the year under consideration. In spite of which the CIT(A) directed the AO to adopt the net profit at 8% on turnover against which as submitted by Id. AR assessee filed no appeal before this Tribunal. Therefore, taking into consideration the fact and circumstances of the case along with the submissions of both the parties, we find no infirmity in the order of CIT(A). Accordingly, the order of Id. CIT(A) is justified. This Ground

No.6 concerning the issue raised by the appellant-revenue is dismissed. In view of the same, other Ground Nos.1 to 5 need no adjudication, hence they are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 08.11.2017.

Sd/-
P. M. Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 08.11.2017

Place : Kolkata

RS,SPS

Copy of the order forwarded to:

1. Appellant –ITO, Ward-31(1), Kolkata, 10B, Middleton Row, 4th Floor, Kolkata – 700 071.
2. Respondent – M/s Gita Enterprises, Room No.211A, Kamlaya Centre, 156, Lenin Sarani, Kolkata – 700013.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

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By order,

Sr.PS/H.O.O
ITAT, Kolkata