

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.4478/M/2014
Assessment Year: 2008-09**

Income Tax Officer- 8(2)(3), Room No.213/216A, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Number One Auto Mobiles Pvt. Ltd., Daddy's Garden Bungalow, Plot No.368/105, Sher-E-Punjab CHS Ltd., Andheri (E), Mumbai – 400 093 PAN: AACCN2576K
(Appellant)		(Respondent)

**ITA No.4563/M/2014
Assessment Year: 2008-09**

M/s. Number One Auto Mobiles Pvt. Ltd., Daddy's Garden Bungalow, Plot No.368/105, Sher-E-Punjab CHS Ltd., Andheri (E), Mumbai – 400 093 PAN: AACCN2576K	Vs.	Income Tax Officer, Ward-8(2)(4), Aayakar Bhavan, M.K. Road, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Hitesh P. Shah, A.R.
Revenue by : Shri T.A. Khan, D.R.

Date of Hearing : 04.12.2017
Date of Pronouncement : 12.01.2018

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeals one by the Revenue and the other by the assessee have been preferred against the order dated 28.03.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. The short facts of the case are as under:

Assessee is engaged in the business of buying and selling of used cars on commission basis and also on agreed price from the car owner and is sold after doing some repairs/alterations. A survey action under section 133A was carried out on 09.10.2007 and certain statements were recorded and documents were impounded. The assessee had filed the return declaring loss of Rs.15,598/- and he was asked to file the copies of audited profit & loss account, balance sheet and books of account, based on which such statement and return of income was filed. The assessee has filed two profit & loss accounts, one with total sales of Rs.6,37,34,479/- and on receiving the statements of sales submitted by the assessee during survey the total sales were changed to the tune of Rs.9,67,28,525/- in the second profit & loss account. Therefore, Assessing Officer (hereinafter referred to as the AO) was of a view that the books of the assessee are not reliable. Therefore, AO has estimated the gross profit @ Rs.10,00,000/- per month and thus estimated the gross profit @ Rs.1,20,00,000/- in the entire year.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) called the remand report and considered the document. He has restricted the GP and restricted the addition to Rs.36,00,000/- by observing as under:

“2.6 The AO's order and reports, the contentions of the appellant and materials on record have been considered. The AO has estimated the appellant's income holding that an estimate is necessary as the appellant has not maintained any proper books of account. The AO has applied an average GP rate @ 15% since the AO found that the GP varied from 2% to 31%. The AO has also not found acceptable the appellant's contention that statement of profit/loss on cars is easily verifiable from the details available in the register of cars and delivery notes which were impounded during survey. On the other hand the appellant claims that while no books of account were maintained, details of purchase, sale and profit of cars was maintained vehicle-wise and this was stated by Shri Avatar Singh Sethi in his statement recorded during survey proceedings. The details of the code used viz., LOCKWASHER was also elaborated, that each alphabet corresponds to which numeral and that each of the delivery notes records on the reverse side the amounts as per the abovesaid code. The appellant has also stated that the total sales comprise of sales of the proprietary M/s Popular Automobiles and the appellant company M/s Number One Automobiles Pvt. Ltd.

The appellant furnished Statement of Profit on sale of cars giving date, Item (i.e., car make, Vehicle registration number, Sales value bifurcated fro Popular Automobiles and Number One Automobiles Pvt. Ltd., Purchase amount bifurcated fro Popular Automobiles and Number One Automobiles Pvt. Ltd., and profit earned on each sale again bifurcated fro Popular Automobiles and Number One Automobiles Pvt. Ltd. Entries in the same were sought to be verified with reference to the delivery notes, the code entries made on the reverse of each delivery note and with reference to the cash entries reflected in the statement prepared at the time of survey. While some entries were found reflected and matched with the figures in the delivery notes, a few delivery notes relevant to entries in the statement filed were not found. Further it was noted that while the appellant claimed sales of Rs.3,29,94,092/- related to Popular Automobiles, the turnover declared in the IT return filed was at Rs.3,36,76,488/-. Thus the statement filed cannot be taken as fully accurate as reflecting either the accurate sales of the accurate profit, consequently some estimate of profit would necessarily have to be made. However nevertheless since many of the entries in the statement matched with the delivery notes as per figures recorded in code, and decoded as per alpha-numeric equation furnished by the appellant, the total sales figure of Rs.9,67,28,527/- is taken as the starting point. Since the delivery notes in the initial months of the relevant Financial Year also were on the letter head of Popular Automobiles and of the later months were mainly in the name of the appellant company, the claim that the total sales comprise of sales of the proprietary concern M/s Popular Automobiles and the appellant company M/s Number One Automobiles Pvt. Ltd. also has merit. As to the GP rate to be applied,

the AO has taken the GP at 15% being the average of GP rates on various sales varying between 2% and 31%. The AO has apparently taken the average of only positive profits resulting from sales by the appellant. However perusal of the statement shows there were some sales showing a loss and some showing zero profit. Hence the AO's average would necessarily have to be revised downwards. In written submission dated 28/03/2014, the appellant has admitted that in the statement recorded the Director has accepted profit of Rs.17,000/- on sale of Rs.2,65,000/- (referring to Question No. 9 of the statement). Even taking this admitted GP rate, this would work out at 6.41%. Applying this admitted GP rate of 6.41% to total sales of Rs.9,67,28,527/- worked out by the appellant itself, the GP would work out to Rs.62,00,298/-. Perusal of the IT return filed by Popular Automobiles shows that the proprietary concern has declared gross profit at Rs.9,37,533/-. Reducing the sale from the total GP of Rs.62,00,298/-, the GP of the appellant company comes to Rs.52,62,765/-. Allowing the expenses claimed at Rs.17,56,482/- the net would be of Rs.35,06,283/-. Given the inaccuracies in the statement of purchases, sales and profit noted, the AO is directed to restrict addition to Rs.36,00,000/-, which would over and above the rent receipt declared by the appellant in its P & L account.

As regards ground No.2 of appeal, the AO is directed to confirm if the department has not filed second appeal against order of CIT(A) for A.Y. 2007-08, and if so, the protective addition is not called for.”

4. The department is in appeal against restricting the GP @ Rs.36,00,000/- and assessee is in appeal for estimating the GP @ 6.41% on the basis of single sale transaction.

5. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that Ld. CIT(A) while deleting the addition has called for the remand report and the Ld. CIT(A) has also sent the additional evidence and the AO has verified all these documents and also verified the details of registration of car and delivery notes which were impounded during the survey and the Ld. CIT(A) has also verified all these documents and after verifying the report the Ld. CIT(A), considering the sales of pre-survey and post survey and considering the sales, has estimated the GP and we do not find any infirmity in the order of the Ld.

CIT(A). Hence, we have no alternative but to endorse the order of the Ld. CIT(A).

6. In the result, departmental appeal is dismissed.

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7. The assessee has filed the appeal on the ground that the Ld. CIT(A) has not accepted the decision for A.Y. 2007-08 wherein the addition of Rs.16,00,000/- was accepted on the basis of income declared inadvertently worked out at the time of survey for 2008-09.

8. We have gone through the order of the Ld. CIT(A). The Ld. CIT(A) has given the direction that if the Department has not filed the appeal for 2007-08 the protective addition is not called for. Therefore, we restore this issue back to the file of the AO to verify the same and decide it afresh.

9. In the result, assessee's appeal is partly allowed for statistical purposes and the Revenue's appeal is dismissed.

Order pronounced in the open court on 12.01.2018.

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 12.01.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.