

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

I.T.A. No. 556/(Asr)/2017

Assessment Year: 2007-08

Waseem Ahmad Khateeb,
Prop. of Brijesh Industries,
Industrial Estate, Sanat Nagar
Srinagar Kashmir
[PAN: ACXPK 8627J]

(Appellant)

Vs. Income Tax Officer,
Ward 3(3), Srinagar
Kashmir

(Respondent)

Appellant by : Sh. Written Submission

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 02.04.2018

Date of Pronouncement: 12.04.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Amritsar ('CIT(A)', for short) dated 30.06.2017, dismissing the assessee's appeal contesting his assessment u/s. 143(3) read with section 148 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 13.03.2013 for Assessment Year (AY) 2007-08.

2. The facts of the case in brief are that the assessee-individual's, in the business of manufacturing & trading of Electric Transformers/ACSR/ACC, etc. income for the relevant year was assessed u/s. 143(3) at Rs.14,29,271 vide order dated 18.12.2009. This was done by applying a net profit rate of 5% on the

assessee's turnover, reckoned at Rs.285.85 lacs, i.e., as against the disclosed turnover of Rs.226.61 lacs. The assessee's bank account was found to bear credits during the relevant year at Rs.321.95 lacs, so that he was called upon in the assessment proceedings to explain the difference, and which he did for Rs.36.10 lacs, being transfer entries from the account of his father (Rs.26.10 lacs) and reversal entries (for Rs.10 lacs). The balance unexplained credit of Rs.59.24 lacs was regarded by the Assessing Officer (AO) as on account of sales, and a profit rate of 5% applied on the total sale thus, i.e., Rs.285.85 lacs. The assessment was subsequently reopened u/s. 148 in-as-much as, as it appears, there was no basis with the AO to treat the unexplained credit as part of sales. The assessee in the reassessment proceedings furnished a reconciliation, i.e., between the disclosed figure of turnover (at Rs.226.61 lacs) and the aggregate credit in the bank (account at Rs.321.95 lacs). The same included Rs.13,29,808 as 'advance against sales', of which Rs.6.05 lacs was found to have been received in cash. As the assessee could not furnish communicable addresses of the persons/parties; bills of sales; money receipt, etc., the same could not be accepted as sales. Further, why would a person pay for purchase in cash, i.e., in excess of Rs.20,000. The said amount was accordingly added as income from an undisclosed source u/s. 68. In appeal, the Id. CIT(A) confirmed the same, as no improvement in his case could be made by the assessee, holding as under:

'A perusal of the assessment order clearly shows that the AO has passed very reasonable order after reconciling all the explanation given by assessee and giving due credit of payment received through cheques, etc. The assessee did not produce any reasonable (G1) explanation in respect of this addition before AO. The appellant has not produced any submission/ evidence in support of his claim even during appellate proceedings even after so many opportunities provided. In view of the above discussions the appeal of the assessee is dismissed.'

Aggrieved, the assessee is in second appeal, raising the following grounds:

‘1. In confirming 5% of the net profit rate on the gross collection of the bank account without deducting transfer & reversal entries in comparison of the net profit rate of 1.02% as declared by the assessee and the addition of Rs.6,050,00.00 as per reassessment order as cash advances.

2. That the notice was served by CIT(A) Jammu and order was passed by CIT(A) Amritsar and notice was received by the assessee after the date of hearing.

3. That the written submission filed by the assessee through speed post were not considered by the CIT Appeals Jammu.

4. That the assessee was not given reasonable opportunity of being heard’.

3. Before me, the assessee was not represented either in person or through an Authorized Representative (AR), placing reliance on his written submissions dated 28.12.2017 (copy on record). The Id. Departmental Representative (DR) would rely on the findings by the AO and the Id. CIT(A).

4. The assessee’s challenge to the net profit rate (of 5% of sales) is without merit in-as-much as the same does not arise either out of the impugned order or the impugned assessment, being a subject matter of assessment u/s. 143(3) dated 18.12.2009. The assessee’s ground with regard to non extension of reasonable opportunity of being heard by the first appellate authority is also without any supporting material and, in fact, even without any contention in its respect per his written submissions, which represent the assessee’s case on merits. There is nothing therein to contradict the specific findings by the AO and, further, that by the Id. CIT(A). There is also no reference therein with regard to the receipt of the notice of hearing from the first appellate authority, much less any placed/adduced on record. No doubt, the written submissions bear contentions *qua* the impugned addition of Rs.6.05 lacs. Even the same is without basis in view of the unrebutted findings by the AO, which remain unaddressed. It has also been observed that considering the same as sales, without any basis there-for, forms the very basis for

initiating the reassessment proceedings. The initiation of the reassessment proceedings is not under challenge, nor was it before the Id. CIT(A).

Under the circumstances, in view of the firm findings by the AO and the Id. CIT(A), which remain unrebutted, there is no basis for disturbing their adjudication *qua* the impugned of Rs.6.05 lacs. In fact, the said figure stands arrived at after considering the assessee's explanation, which thus stands accepted in part. So, however, in-as-much as 5% of the impugned sum of Rs.6.05 lacs stands already assessed as net profit on sales, only the balance of 95% thereof, i.e., Rs.5,74,750, could have been further added, i.e., upon regarding the same as unexplained credit u/s. 68 and not as part of sales. The assessee gets part relief to that extent, i.e., Rs.30,250.

I decide accordingly.

5. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on April 12, 2018

Sd/-
(Sanjay Arora)
Accountant Member

Date: 12.04.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Waseem Ahmad Khateeb, Prop. of Brijesh Industries, Industrial Estate, Sanat Nagar Srinagar Kashmir
- (2) The Respondent: I.T.O. Ward 3(3), Srinagar Kashmir
- (3) The CIT(Appeals)-1, Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order