

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1474/M/2016
Assessment Year: 2011-12**

Mr. Atul Kanayalal Bhuta, 201-H, Aradhana Building, Jaiwant Sawant Marg, Dahisar West, Mumbai - 400 068 PAN: AAHPB9927E	Vs.	ITO-32(1)(2), Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai
(Appellant)		(Respondent)

**ITA No.2272/M/2016
Assessment Year: 2011-12**

Office of the Income Tax Officer-32(1)(2), Room No.-204, C-11, 2 nd Floor, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai - 51	Vs.	Mr. Atul Kanayalal Bhuta, 201-H, Aradhana Building, Jaiwant Sawant Marg, Dahisar West, Mumbai - 400 068 PAN: AAHPB9927E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V.C. Shah, A.R.
Revenue by : Ms. Pooja Swaroop, D.R.

Date of Hearing : 21.02.2018
Date of Pronouncement : 17.04.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals one by the assessee and the other by the Revenue have been preferred against the order dated 29.02.2016 of the Commissioner of Income Tax

(Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The grounds of appeal of the assessee are as under:

“1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in concluding that the provisions of section 44AD are not applicable to the appellant though your appellant's case is covered in the said section and return of income was filed accordingly.

2. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in concluding that sales of Rs. 86,71,625/- as worked out by Assessing officer (A.O.) were correct as against actual sales of Rs. 18,61,745/- though there was closing stock held by your appellant which was sold in subsequent years as per return of income filed in subsequent years which were on record by misreading the personal balance sheet as of business and without considering that sales calculation done by A.O. was incorrect and he further erred in directing that net profit be estimated at 10 %.

3. Your appellant craves leave to add, to amend, alter or delete any of the above grounds.”

3. The issue raised in ground No.1 by the assessee is against the conclusion of Ld. CIT(A) that provisions of section 44AD are not applicable to the assessee's case and the issue raised in ground No.2 is as regards Ld. CIT(A) estimating the sales at Rs.86,71,625/- as against the actual sale of Rs.18,61,745/- by ignoring the fact that there was a closing stock held by the assessee which was sold in the subsequent years and further directing to estimate the net profit at 10% of the said sales. Whereas the issues raised by the Revenue are against estimation of the net profit at 10% of the gross estimated sales by Ld. CIT(A) as against the net profit calculated by the AO on the basis of audited books of accounts for A.Y. 2010-11. As a matter of fact, the assessee suo-moto declared net profit of 88.78% in the immediately preceding

year. The facts in brief are that the assessee filed return of income on 12.12.2012 declaring an income of Rs.1,76,740/- which was processed under section 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny under CASS and notices under section 143(2) and 142(1) of the Act were duly issued and served upon the assessee. During the course of assessment proceedings, the AO noted that the assessee has shown income from M/s. Riddhi Sidhi Textiles, a proprietary concern at 8% of the turnover of Rs.18,61,745/- under section 44AD of the Act. The Ld. A.R. submitted before the AO that no books of accounts were maintained and expressed his inability to file profit & loss account, balance sheet and related annexures. Thereafter, the AO asked the assessee to file a tentative personal capital account and balance sheet. The assessee filed the copies of P & L Account, balance sheet pertaining to A.Y. 2009-10 along with audit report. The AO came to the conclusion that the assessee has not filed books of accounts, profit & loss account and balance sheet in respect of gross profit of Rs.18,61,745/- shown by the assessee. Thereafter, the AO estimated the sales of the assessee at Rs.86,71,625/- in para 5.8 of the assessment order and net profit was calculated at Rs.76,90,864/- and added the same to the income of the assessee on the basis that there was a closing stock of Rs.57,98,643/- comprising finished goods worth Rs.39,15,698/- and raw material worth Rs.18,82,945/- as against the Rs.Nil in the tentative balance sheet as on 31.03.2011. The AO came to the conclusion that assessee has

deliberately suppressed the sales by not maintaining any books of accounts whereas in the immediately preceding financial year assessee got his books of accounts audited. Finally the AO assessed the income at Rs. 77,18,660/- as against the returned income of Rs. 1,76,740/-.

4. Aggrieved by the order of AO, the assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee by estimating the income on the said sales of Rs.86,71,625/- @ 10% which worked out to Rs.8,67,162/- by observing and holding as under:

"3.3. I have carefully gone through the assessment order as well as the written submission of the AR. I have also perused the details filed by the AR. From the facts of the case it is clear that the beginning point of the enquiry of the AO was the tax audit report of the immediately preceding year. There is no dispute on the fact that the closing inventories of M/s Riddhi Siddhi Textiles as per the balance sheet as on 31.3.2010 was Rs.57,98,643/-. The appellant says that he has sold mainly grey clothes during the PY related to AY 201112. The appellant further says that he had made fresh purchases of Rs.7,36,504/-. In this situation the appellant had a saleable stock of Rs.65,35,147/-(Opening stock of Rs.57,98,643/- + Purchases Rs.7,36,504/). The AO has mentioned in the assessment order that the closing inventory at 31.3.2010 consists of finished goods worth Rs.49,15,698/- and raw material worth of Rs.18,82,945/-.

3.4 In the written submission the AR has mentioned that the appellant has also sold some old stock of embroidered Punjabi suit pieces of ladies but at the same time it is also stated by the AR that the total sales aggregating to Rs.18,15,090/- were of fabric only. Thus the appellant was not able to establish as to what amount has been sold out of the purchases made during this year and what amount of the opening stock has been sold. The appellant had made contradictory stands before the AO. Firstly he says that he is not required to prepare balance sheet as his case is covered u/s 44AD. Thereafter when a show cause is received by him he submits what is called "roughly worked out" balance sheet showing closing stock of Rs.53,44,955/-. As mentioned in the assessment order the closing stock was shown as Rs. Nil in the tentative balance sheet as on 31.3.2011. This was stated to be personal balance sheet. Considering

these facts it is held that the contention of the appellant that his case is covered under the provision of section 44AD cannot be accepted. However, computation of net profit of Rs.76,98,864/- on an estimated turnover of Rs.86,71,625/- seems to be unreasonable and overpitched because a net profit rate of 88.78% seems to be extremely unusual in the case of a trader.

3.5. Even though the present case is not a case of rejection of books of accounts yet the estimation of profit has been done by rejecting the computation made by the assessee. In this situation it has been held by a number of courts that the estimation of profit has to be reasonable. It has been held in the case of Prakash Automobile versus CIT 322 ITR 425 (KER) that even where account books are found to be unreliable and therefore requiring to be rejected the estimate of profit has to be on a rational basis. It has also been held in the case of CIT versus Dr A.P. Bahal 322 ITR 71 (RAJ) that even where rejection of accounts was justified for defects in accounts, the estimate of income should be based upon some materials in support of same. Where there is none, such estimate cannot be upheld. The law as regards the manner of estimate was reiterated by the High Court in CIT versus R. Narayanrao 338 ITR 625(AP). In this case the Hon. court held that even where books cannot be accepted and estimate has necessarily to be made either under section 143(3) or 144, the best judgment has to be made in a reasonable manner and not according to the whims and fancies of the assessing officer. It has to be based upon materials produced by the assessee and gathered by the assessing officer. Based on facts of the case and legal decisions mentioned above the net profit of the appellant is estimated @ of 10% of the gross receipts. Since the gross receipts computed by the AO is Rs.86,71,625/- the net profit is estimated at Rs.8,67,162/-. The addition is accordingly restricted to Rs.8,67,162/- and the balance is deleted. Grounds of appeal no.1,2,3 & 4 are accordingly partly allowed.”

5. Now against the order of Ld. CIT(A), both the assessee as well as the Revenue are in appeal before the Tribunal. The assessee has challenged the estimation of sales at Rs.86,71,625/- and also estimation of net profit at 10% whereas the Revenue has challenged the restriction of addition on the said sales at 10%. The undisputed facts are that the assessee has filed the return of income by estimating the net profit of sales of Rs.18,61,745/- under section 44AD of the Act and showed the same in the return of income but has not

maintained any books of accounts regarding day to day transactions. The AO during the course of assessment proceedings required the assessee to file the details of partywise sales but the assessee expressed inability to file the same. Thereafter the AO called upon the assessee to file personal capital account and audited profit & loss account and also the balance sheet along with audit report for A.Y. 2010-11 which the assessee duly filed along tentative personal capital account and balance sheet for AY 2011-12 qua his personal accounts and not qua proprietary concern. the AO observed that the stock of Rs.57,98,643/- which comprised of finished goods worth Rs.39,15,698/- and raw material worth Rs.18,82,945/- as appearing in the audited balance sheet on 31.03.10 was not appearing in the tentative balance sheet as on 31.03.11 filed by the assessee during the assessment proceedings. Thus, the AO came to a conclusion that the assessee has knowingly not maintained the books of accounts as is apparent from the fact that amount of closing stock was not shown in the balance sheet and thus estimated the sales at Rs.86,71,625/- and net profit of Rs.76,90,864/- on the basis of the pattern of sales and profit based upon audited accounts in A.Y. 2010-11. The detailed working has been given by the AO in para 5.7 & 5.8 and finally added Rs.76,90,864/- to the income of the assessee. The Ld. CIT(A) confirmed the sales as calculated by the AO at Rs.86,71,625/- but the income was estimated at 10% of the said sales. Now the Ld. A.R. vehemently submitted before us that the closing stock was not appearing in the tentative balance sheet as the

assessee has filed the personal capital account and personal balance sheet before the AO and not as regards the proprietary business of the assessee. Therefore, the said amount of closing stock was not appearing in the tentative balance sheet filed by the assessee. The Ld. A.R. submitted that the said stock was sold in the subsequent years and the sales there from and profit thereon were duly shown in the return of income. The Ld. A.R. also submitted that the AO has not brought anything on record to show that the assessee has made actual sale of Rs.86,71,625/- but rather resorted to estimating the sales on conjuncture and surmises by taking the amount of closing stock as shown in the audit account of the preceding previous year and the Ld. CIT(A) also sustained the said order so far as the estimation of sale is concerned.

6. Whereas the Ld. D.R. supported the order of Ld. CIT(A) so far as the confirmation of sales is concerned but objected the restriction of profit to only 10% of the GP whereas in the immediately preceding year the assessee offered 88.78% of GP estimated.

7. We have heard the rival contentions and perused the relevant materials on records. In the present case, the assessee filed its return of income under section 44AD and therefore, is not required to maintain any books of accounts qua his proprietary business done by M/s. Riddhi Sidhi Textiles as the total sales were less than Rs.18,61,745/-. The assessee also filed the bank statements before the authorities below and the authorities below have failed to bring anything

on record which proved that the assessee has actually made the sales of Rs.86,71,625/- though the profit in the immediately preceding year was much higher. The AO also failed to rebut the contentions of the assessee that the said stock was duly showed in the subsequent years and also the sales thereof. Now under these circumstances when no books of accounts are maintained by the assessee and return is filed under section 44AD of the Act, we are not in a position to sustain the order of Ld. CIT(A) estimating the sales which has no basis at all. Moreover, the AO has also not brought on record any evidences that assessee's income was more than 8% during the year. We, therefore, are of the considered view that the order passed by Ld. CIT(A) is wrong and accordingly is set aside the same and AO is directed to delete the addition. Resultantly, the appeal filed by the Revenue is also dismissed.

8. In the result, appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.04.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.04.2018.

* 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.