

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A. T VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1792/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

ACIT, Cir-3, Bankura "BilashBhawa", Chandmaridanga, P.O& Dist.: Bankura, 722101.	Vs.	Bharati Poultry Pvt. Ltd. Rashtala, P.O&Dist.: Bankura, Pin-722101.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AACCB 2814 L		
(Revenue)	..	(Assessee)

&

आयकरअपीलसं./ITA No.1758/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

Bharati Poultry Pvt. Ltd. Rashtala, P.O&Dist.: Bankura, Pin- 722101.	Vs.	ACIT, Cir-3, Bankura "BilashBhawa", Chandmaridanga, P.O& Dist.: Bankura, 722101.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AACCB 2814 L		
(Assessee)	..	(Revenue)

Assessee by : Shri Subash Agarwal, Advocate
Revenue by : Shri S. Dasgupta, Addl. CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 15/03/2018

घोषणाकीतारीख/Date of Pronouncement : 25/04/2018

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned cross-appeals filed by the Assessee and Revenue, pertaining to Assessment Year 2011-12, is directed against an order passed by the Commissioner of Income Tax(Appeals), Durgapur, in Appeal No.48/CIT(A)/DGP/2014-15, dated 08.06.2016, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3)

of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 27.03.2014.

2. Since these cross-appeals relate to the same assessee, same assessment year, and identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. The Grievances of the assessee are as follows:

"1. For that the order of the forum below is arbitrary, illegal, unjustified and erroneous and has been passed on improper application of mind being devoid of merit as such deserves to be quashed in limine.

2. For that the entire assessment order along with the appellate order deserves to be quashed and the returned income deserves to be accepted on the ground that, there cannot be rejection of audited accounts on sheer surmises or suspicion justifying invocation of section 145 and estimation of income @ 45.74% of the gross receipt, subsequently estimated @ 37.97 % by the CIT(A) on flimsy grounds without any reason or rhyme.

3. For that the estimation of income @ 45.74% of the gross receipt by the AO on the basis of whims, surmises or caprices subsequently estimated @ 37.97% by the CIT(A) deserves to be rejected and the return Income deserves to be accepted on the ground that not only the estimation is highly unjustified, unreasonable, unrealistic and unacceptable in view of the fact that, the estimation based upon sheer assumption and presumption without reference to past records or comparable data or cases is unsustainable in the eye of law.

4. For that the appellant craves leave to add/amend/alter further grounds if any at the time of hearing of appeal.

4. The Grievances of the Revenue are as follows:

"1. In the facts and circumstances of the case, the Ld. CIT(A) has erred in applying rate of 37.97% on the total turnover based on Report of NABARD and without giving any reason wrongly in rejecting the findings of the AO for making separate additions that included introduction of unaccounted money of Rs.91,22,385/-, suppressed purchase of Rs.8,44,262/-, Excess liability due to exaggerated closing stock of Rs.1,62,31,741/-, Disallowable depreciation on factory building of Rs.19,37,731/- apart from some disallowance of expenses on percentage basis.

2. In the facts and circumstances of the case, the Ld. CIT(A) has erred restricting addition to Rs.2,59,70,386/- instead of Rs.3,12,56,067/- as determined by AO when he failed to point out any specific defect in the assessment made by AO.

3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of hearing.”

5. In these appeals, the main grievance of the assessee is that the Id. CIT(A) was erred in restricting the net profit rate of 37.97% on estimation basis whereas the returned income of the assessee deserved to be accepted. The Solitary grievance of the Revenue is that the CIT(A) was erred in reducing the net profit percentage from 45.74% to 37.97% without bringing any comparable cases.

6. The brief facts qua the issue are that during the assessment proceedings, the assessee has not produced books of accounts before the assessing officer. Moreover, the audit report was signed by one Chartered Accountant without examining the books of accounts and on the basis of relying on statutory audit report. The statutory audit report was prepared without examining the books of accounts. During the assessment proceedings, the assessee failed to produce basic vouchers, sale memo, bills, day to day production details, stock register, quantitative consumption, register of raw materials, labour register, Bank statements and addresses of purchasers/sellers etc. Therefore, the Assessing Officer observed that it was not possible for him to examine the details of expenses furnished by the assessee. The Assessing Officer also noted that there was organized mismanagement of accounts and complexity of accounts, the valuation of stock is not in tune with the accepted accounting standards AS-2(revised).

7. The Assessing officer has worked out various inadmissibility in the assessment order, like, inadmissibility of expenses, claim of personal expenses, on account of valuation stock, depreciation disallowance on account of non- submission of details, non-submission of details relating to purchase and sales, non-submission of proof of administrative expenses,

addresses of debtors and creditors were not supplied by the assessee for third party confirmation etc. Therefore, the Assessing Officer noted that since the assessee had not submitted any books, bills, vouchers etc. during the assessment proceedings and looking to the complexity of accounts, which had been pin-pointed by the Assessing Officer, it was appropriate to reject the books of accounts and made the addition based on the net profits rate of the assessee company. The Assessing Officer worked out the net profit rate @45.74%(pin pointed mistake at Rs.3,30,54,997/- vis a vis turnover of Rs.7,22,67,157/-).

7.On appeal by the assessee, the Id. CIT(A) restricted the addition of net profit at 37.93%. The Id. CIT(A) observed that Assessing Officer worked out net profit rate @45.74% which was not supported by any research or projection of profit by Govt. Agency. The CIT(A) noted that the NABARD has worked out the profitability in layering business which came to 37.93% and the project report of NABARD is authentic document which is used for providing loan. Therefore, the Id. CIT(A) took the base of the NABARD profitability and restricted the addition of net profit @37.93%.

8.Aggrieved by the order of the Id. CIT(A), the Assessee as well as Revenue are in appeal before us.The Id. Counsel for the assessee has submitted before us that the net profit addition restricted by the Id. CIT(A) based on the NABARD report at 37.93% is not authentic. The Id. Counsel pointed out that NABARD report is only a report and it is not a financial statement, hence it should not be relied. Neither the Assessing Officer nor the CIT(A) worked out net profit by any research or profits of the past years of the assessee. The assessee's past history of profit may be used to determine the net profit rate for the purposes of making addition. The net profit rate restricted by the Id. CIT(A) is not supported by any research data

or comparable data of outside similar business. The projection of profit is also not supported by the further profit earned by the assessee, therefore, there is a lot of anomaly in determining the net profit rate and the net profit rate of the assessee company should be lower than 37.93%. The Id. Counsel for the assessee submitted that the Id. CTI(A) has not taken the basis of the past years profitability of the assessee company to restrict the net profit ratio at the rate of 37.93% and the said profit rate is arbitrary and excessive.

9. On the other hand, the Id. DR for the Revenue, has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the Assessing Officer has pin pointed various inadmissibility in the assessment order, such as claim of personal expenses, non-submissions of details, non-submissions of details relating to purchase & sale, closing stock, non-submission of proof of administrative expenses, Non-submission of address of the debtors and creditors for confirmation etc. We note that at the appellate stage, the assessee did not try to controvert the findings of rejection of books of accounts, which was done by the AO. The assessee has been putting more emphasis on application of net profit percentage, based on his past results/profits. We note that the addition made by the Assessing Officer which resulted at net profit @45.74%, is also not supported by any research or projection of profit by Govt. Agency or by any third party comparable.

11. We note that when the assessing officer rejectsthe books of accounts then best way to make addition, is to estimate the profit of the assessee, based on past financial statements and past profit/loss history and if the

same is not available then profitability of the outside comparable businesses may be taken as base. We note that the Id. CIT(A) relied on the NABARD report, to restrict the net profit at 37.93%, which according to us is not solely a determinative factor to work out net profit of the assessee company because it is only a report and not a comparable financial statement in assessee`s similar business. We note that the Id. Assessing Officer as well as Id. CIT(A) has failed to bring on record, the outside comparable cases of the similar business, as the assessee is running. The Assessing Officer has not worked out a detailed report on the past history and profitability of the assessee company and if the past profitability of the assessee company is not available, the Assessing Officer should bring on his record the comparable businesses where the similar business or activities were carried on, to adopt the net profit ratio. Therefore, we are of the view that it would be appropriate to remit the said issue back to the file of the Assessing Officer with a direction to work out the assessee`s past profitability history and also the comparable of the similar business entities working in similar products and similar environment. We also direct the assessee to produce the past results of the assessee company and comparable cases to prove his bona fide. Therefore, we set aside the order of the Id. CIT(A) and remit the issue back to the file of the Assessing Officer to adjudicate the issue afresh as per discussion made(supra).

12. In the result, the appeal filed by the Assessee as well as Revenue are allowed for statistical purposes.

Order is pronounced in the open court on 25.04.2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Dated 25.04.2018.

[RS, SPS]

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee- Bharati Poultry Pvt. Ltd.
2. प्रत्यर्थी/ The Revenue –ACIT, Cir-3, Bankura
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.