

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.2342/Kol/2016
Assessment Year:2010-11

M/s Aditya Enterprise 27, Mohan Lal Street, Kolkata-004 [PAN No.AAOFA 6657 K]	बनाम / V/s.	ITO Ward-41(1) 18, Rabindra Sarani, Podder Court, Kolkata- 001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri S. Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	28-03-2018
घोषणा की तारीख/Date of Pronouncement	03-05-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-13, Kolkata dated 30.12.2015. Assessment was framed by ITO Ward-41(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 22.03.2013 for assessment year 2010-11. The grounds raised by the assessee per its appeal are as under:-

- “1. For that on the facts and in the circumstances of the case, Ld. CIT(A) was not justified in confirming the addition of Rs.5,26,350/- made by the AO on account of gross profit, which was wrongly estimated @ 2% of the turnover.*
- 2. For that on the facts and in the circumstances of the case, Ld. CIT(A) was not justified in confirming the addition of Rs.2,75,000/- made by the AO in respect of capital introduction by wrongly invoking section 68 of the Act.*
- 3. (a) For that on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the addition of 33,87,197/- made by the AO on account of alleged non-existent sundry creditors.*

(b) For that the Ld. CIT(A) ought to have considered the fact that no separate addition on account of sundry creditors is permissible in law once addition has been made on account of GP percentage.

4. That the appellant craves leave to add, alter or delete all or any of the ground of appeal.”

Shri Subash Agarwal, Ld. Advocate appeared on behalf of assessee and Shri S. Dasgupta, Ld. Departmental Representative appeared on behalf of Revenue.

2. First issue raised by assessee in its ground of appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of Rs.5,26,350/- on account of gross profit estimated @ 2% of the turnover.

3. Briefly stated facts are that assessee in the present case is a partnership firm and engaged in the wholesale trading of pulses. The assessee in its profit and loss account has shown gross profit ratio @ .87% on the turnover of Rs.4,67,58,143/- only. The assessee in support of its gross profit ratio failed to furnish any evidence. Therefore, AO treated the gross profit ratio @ 2% and made addition of Rs.5,26,310/- to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that gross profit ratio has been presumed @ 2% without any basis. It was also submitted that assessee was unable to produce the books of account due to the reasons that there was rumors in the market that assessee has gone bankrupt. Therefore all the creditors started demanding their dues suddenly. The landlord also forced the assessee to vacate the shop, go-down instantly. Further the landlord has thrown all books of account so that assessee was unable to produce the same before the AO. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

“Assessment year in question is 2010-11 and financial year is 2009-10. Assessment was completed on 22.03.2013. Assessee is stating that he was compelling to vacate the shop and godown in the month of April 2010. The appellant / assessee filed return of income tax for the Assessment Year 2010-11 on 05/10/2010 in ITR-5 and got Audited its accounts on 22/09/2010. The income shown in the return Rs.22,340/- as per Audited books of account. If assessee books were lost in the Month of April 2010 then how he could get his accounts audited on 22/09/2010. Actually, assessee for reason best to him is not producing books of account and assessing officer rightly completed the assessment.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

6. Ld. AR for the assessee before us submitted that assessee was selling its goods at a very low margin due to cut throat competition as well as to have greater customers' base for its business. Ld. AR also submitted that assessee in order to achieve the high turnover has started selling the goods at a very low margin. Therefore, the gross profit ratio came down but as a result of high turnover the gross profit in absolute figure has gone very high. As such, the assessee was able to achieve higher amount of gross profit in absolute figure than the gross profit ratio. Ld. AR further submitted that there was less turn-over in earlier years but the gross profit ratio was higher but in absolute figures the gross profit was of less amount. The Ld. AR in support of assessee's claim filed a chart showing the gross profit ratio as well as absolute figure of gross profit vis-a-vis turnover of the assessee which is reproduced as under:-

Sl.No	AY	Turnover	G.P.	Percentage %
1	2008-09	6026520.68	145783.6	2.41
2	2009-10	14980376	295197	1.97
3	2010-11	46758142.55	408810.03	0.87

Ld. AR in view of the above, prayed that gross profit ratio declared by assessee should be accepted.

On the other hand, Ld. DR for the Revenue vehemently relied on the order of Authorities Below. He left the issue to the discretion of the Bench.

5. We have heard the rival contentions of both the parties and perused the material available on record. It is undisputed fact that assessee failed to furnish the books of account during assessment proceedings. Therefore, in such a situation, only recourse available to the revenue is to estimate the profit but on reasonable basis. There is also no ambiguity that the assessee in the earlier years for the AYs 2008-09 and 2009-10 has declared gross profit ratio @ 2.41% and 1.97% respectively on the turnover of Rs.60,25,520/- and Rs.1,49,80,376/-.

However we find that there is a direct relationship between gross profit ratio and the turnover. It is also a fact that gross profit ration has drastically come down from 2.41% to 0.87% but the turnover of the assessee has increased manifolds resulting greater amount of gross profit in absolute figures.

5.1 After considering the facts in totality, we find force in the argument placed by Ld. AR of the assessee that assessee in order to achieve higher turnover has reduced its margin on sale. There is no dispute that the turnover of the assessee has gone high from Rs.60,26,520/- to Rs.4,67,58,142.55 which resulted higher amount of gross profit in absolute figures. We also note that there is cut throat competition in the market and therefore to survive in the market the assessee has to drive profit as per the prevailing market rate. Thus, it appears that assessee to achieve higher amount of sale and customers base has worked during the year at very low margin which resulted reduction in the gross profit ratio but higher amount of gross profit in absolute figures. Therefore, we are inclined to estimate the profit @ 1% of the turnover. Thus, the ground of assessee is partly allowed in terms of above.

6. Next issue raised by assessee is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of Rs. 2.75 lakh u/s 68 of the Act on account of capital introduction by the partners.

7. The assessee during the year has shown capital contribution of Rs.2.75 lakh by its partners. The assessee in support of its fresh capital contribution has not provided any documentary evidence. Therefore, the AO was treated as undisclosed income and added to the total income of assessee.

8. Aggrieved assessee preferred an appeal before Ld. CIT(A) who confirmed the order of AO.

Being aggrieved by this order of Ld.CIT(A) assessee came in second appeal before us.

9. Ld.AR for the assessee before us submitted that the AO in his order has admitted that the capital was contributed by the partner therefore no addition in the hands of the assessee can be made. If at all the addition needs to be made then it can be done in the hands of partner.

The Ld. AR also submitted that once the profit has been determined on estimation basis then no other addition can be made in the hands of the assessee. The ld. AR in

support of assessee's claim relied on the judgment of Hon'ble Jharkhand High Court in the case of *Amitabh Construction Pvt. Ltd. Vs ACIT* reported in 335 ITR 523 (Jhar), wherein the Hon'ble High Court has observed as under :

Section 68 of the Income-tax Act, 1961 - Cash credit - Where Assessing Officer had passed a contradictory order by making addition under section 68 holding that books of account were not reliable, while deciding issue of sundry creditors, but relied upon return for accepting profit shown to be correct which was supported by books of account, addition under section 68 was not justified

On the other hand, LD. DR vehemently relied on the order of Authorities Below.

10. We have heard the rival contentions of both the parties and perused the material available on record. The issue in the instant case relates to the addition made by the AO on account of capital contribution made by the partner of assessee-firm for Rs.2.75 lakh. It is undisputed fact that fresh capital was introduced by the partner of assessee-firm and in such case no addition can be warranted in the hands of assessee. It is because the fresh capital was introduced by the partner of the assessee-firm if any addition used to be made then it has to be added in the hands of partner. Therefore we reverse the order of Authorities Below. This ground of appeal assessee is allowed.

11. Next issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of Rs.33,83,197/- on account of non-existence creditors.

12. During the courses of assessment proceedings, AO has presumed that the creditors shown by assessee are non-existence. Accordingly, the creditors were disallowed and added to the total income of the assessee.

13. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of AO.

Being aggrieved by this order of Ld. CIT(A) assessee is in second appeal before us.

14. Ld. AR for the assessee before us submitted that the creditors were arising out of purchase and therefore the creditors cannot be disallowed without disturbing the purchase. Ld. AR also submitted that the profit in the instant case was estimated @ 2% therefore no disallowance of whatsoever can be made in the hands of assessee on account of non-existence creditors.

On the other hand, Ld. DR for the Revenue vehemently relied on the order of Authorities Below.

15. We have heard rival contentions of both the parties and perused the material available on record. In the instant case, the profit was determined on estimated basis due to the fact that assessee failed to produce books of account during the assessment proceedings. Once then profit has been determined on estimated basis then in our considered view no disallowance can be made on account of sundry creditors. It is undisputed fact that these sundry creditors were arising from the purchases made by assessee and therefore the same cannot be added without disturbing the purchases. Moreover in the instant case the profit has been determined on estimated basis. Thus in our considered view there cannot be any disallowance of sundry trade creditors. Therefore we reverse the order of Authorities Below. This ground of appeal of assessee is allowed.

16. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 03/05/2018

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

Judicial Member

*Dkp, Sr.P.S

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

Accountant Member

दिनांक:- 03/05/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Aditya Enterprise, 27, Mohan Lal Street, Kolkata-004
2. प्रत्यर्थी/Respondent-ITO Ward-41(1),18, Rabindra Sarani, Poddar Court, Kolkata-01
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता