

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member]

**I.T.A. No. 2385/Kol/2017
Assessment Year: 2012-13**

Arup Kumar Hazra..... Appellant
C/o. S.N. Ghosh & Associates, Advocates
Seben Brothers' Lodge
P.O. Buroshibtala
Chinsurah
Dist. Hooghly
PIN - 712 105
[PAN : AORPH 9261 R]

I.T.O. Ward-39(2), Midnapore..... Respondent
Income Tax Office
Sahoo Bhawan
Khudiram Nagar
P.O. Midnapore
Dist. Midnapore (W)
Pin - 721 101

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the assessee.
Shri Pinaki Mukherjee, Addl. CIT, Sr. DR, appearing on behalf of the Revenue

Date of concluding the hearing : April 19th, 2018

Date of pronouncing the order : May 4th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-11, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 22/09/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. The assessee is an individual and is a dealer in liquefied petroleum gas of Indian Oil Corporation Ltd. He has a proprietary concern under the name and style of M/s. Paul Service Station. He filed his return of income on 29th September, 2012, disclosing total income at Rs.6,74,512/-. The Assessing Officer completed the assessment u/s 143(3) of the Act, by determining the total income of the assessee at Rs.38,66,460/-, *interalia* making addition on account of concealed investment, alleged gross profit earned on commission on estimate basis, violation of provision of Section 269SS of the Act, etc. The assessee carried the matter in appeal.

2.1. The Id. First Appellate Authority granted part relief. Aggrieved with the addition sustained by the Id. First Appellate Authority the assessee has filed this appeal.

3. Though there are three grounds of appeal, the sole issue that is in dispute before me is the addition of Rs.11,07,628/-, made by the Assessing Officer on estimate basis on the ground that the assessee has earned undisclosed gross profit.

3.1. The Id. Assessing Officer dealt with this issue at para 2 of his order at page 2 & 3. The Id. CIT(A) affirmed the same, by holding as follows:-

"5. I have carefully considered the arguments of the A/R of the appellant and perused the relevant issue in the assessment order as well as the materials placed before me. The short point for my consideration is whether the estimated addition to the trading account is justified in the circumstances. It is observed that the appellant has disputed the addition mainly on the footing that the Assessing Officer could not point out any discrepancy in the books of account or adduced any adverse evidence relating to purchases and/or sales made by him for the Assessment Year under consideration. It was also contended that the books of accounts were not rejected by the AO. Be that as it may, the appellant could not bring on record any material to dislodge the finding of the AO in respect of the action of the AO for conceiving the total gross profits at Rs. 36,28,601/- and Rs. 2,68,642/- totaling to an amount of Rs. 38,97,243/- in place and stead of Rs. 27,89,615/- as shown by the appellant in his accounts which resulted in the addition of Rs. 11,07,628/- on the ground of undisclosed gross profit. Admittedly, the AO has given an opportunity to the appellant to controvert his findings in the show cause notice. It was mentioned by the AO that he had relied upon the statement as furnished by the I.O.C.L. in this respect in computing the gross commission received by the appellant. I have perused the arguments advanced by the appellant on this point. However, I am not convinced by the arguments disputing the computation in respect of undisclosed gross profit as deduced by the AO. In fact, the basis of the addition in this respect is also not controverted by evidence. The addition made on account undisclosed gross profit is explained by the AO with facts and figures and as such, the finding reached on that behalf is sacrosanct in itself. In such event, I concur with the finding reached by the AO in resorting to estimate in the sum of Rs.11,07,628/-, which, in my considered opinion, appears to be justified considering the circumstances of the case and therefore I am inclined to uphold the same. The ground no. 3 raised in this respect is thus dismissed.

4. After hearing rival submission, I find that the Assessing Officer has made the addition on estimate basis, without disturbing the opening stock, purchase and sales and closing stock of High Speed Diesel and Motor Spirit. The books of accounts of the assessee have not been rejected. The fact is that the assessee had maintained books of accounts and these were duly audited u/s 44AB of the Act. The purchases made by the assessee by the assessee of Motor Spirit and High Speed Diesel are only from Indian Oil Corporation Ltd. The lubricants were

purchased from Haldia IOC Employees' Welfare Co-operative Credit Society Ltd. All the purchases were made through proper banking channels. The sales were made in cash. The ld. D/R, does not dispute the fact that there would be shortage of stock in this line on account of spillage and evaporation. This fact is also recognised by the Government of India. The Assessing Officer has not found or pointed out any discrepancy in the books of accounts. When the books of accounts are not rejected, the Hon'ble Calcutta High Court in the case of *Swadeshi Commercial Co. Ltd. vs. CIT (ITA No. 219 of 2001 dt. 18/12/2008) (Cal)*, held that gross profit cannot be estimated. The Assessing Officer has no evidence to come to a conclusion that the assessee had earned undisclosed profit. The entire addition was made on surmises and conjectures. Even otherwise, I find that the assessee has explained the issue with facts and figures. Under these facts and circumstances, the addition made by the Assessing Officer as sustained by the ld. CIT(A), is bad in law.

5. In view of the above discussion, I delete the addition made and allow this appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

Kolkata, the 4th day of May, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated: 04.05.2018
{SC SPS}

Copy of the order forwarded to:

1. Arup Kumar Hazra
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3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches