

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.427(Asr)/2017
Assessment Year: 2012-13

Income Tax Officer,
Ward-3(1), Srinagar

Vs. Sh. Hilal Ahmad Khan,
Prop. M/s King Khan Enterprises,
Mandir Bagh, Habba Kadal,
Srinagar

(Appellant)

PAN:BJAPK 2932F
(Respondent)

Appellant by: Sh. Gautam Deb (Ld. DR)

Respondent by: Sh. Bashir Ahmad Lone (Ld. CA)

Date of hearing: 08.08.2018

Date of pronouncement: 16.08.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Revenue Department, on feeling aggrieved against the order dated 15.03.2017 passed by the Id. CIT(A), J&K, Jammu u/s. 143(3) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The following grounds of appeal raised by the Revenue Department.

"1. Whether the Ld. CIT(A) was right in law and fact in applying very low net Profit Rate of 0.05% instead of Net Profit Rate of 8% applied by the Assessing Officer without appreciating the fact that the assessee has shown utter non-cooperation and no books of accounts or other details as called by the AO were filed by the assessee during the assessment proceedings.

2. Whether the Ld. CIT(A) was right in law and fact in allowing the appeal of the assessee by relying on the explanations of the assessee submitted during the appellate proceedings though no evidence for correctness of the claim of unsecured loans and creditors were filed by the

assessee during the assessment proceedings despite opportunities being provided by the AO.”

3. In the instant case, during the assessment proceedings, assessee had failed to produce the books of account and other details because the same have been destroyed in flood of September, 2014 in Kashmir, however, the Assessing Officer while relying upon the material available on record to the best of his judgment made an assessment u/s 144 of the Act by applying 8% as Net Profit rate and also made an addition while disallowing @ 25% of the total sundry and other creditors, i.e., on *ad hoc* basis.

The assessment order was challenged before the Id. CIT(A) and the list of details of 02 comparable cases dealing with the identical and similar trade and CBDT Circular, which was issued qua flood of Sep,2014 in Kashmir, have been submitted before the Id. CIT(A). It was also submitted before the Id. CIT(A) that although the assessee could not produce the books of account and other details as the same were destroyed in the flood of Sep., 2014 in Kashmir, however, it is a fact that the books of account of the assessee have duly been audited by the Chartered Accountant. The Id. CIT(A) while taking into consideration of two comparable cases dealing with the similar and identical business/trade as well as other circumstances applied the Net Profit rate to the tune of 0.5% in the case of the assessee.

The order of the Id. CIT(A) is under challenge before us and in support of its case, the Ld. DR submitted that the Id. CIT(A) has committed error in not appreciating the fact that the assessee has shown utter non-cooperation and no books of account or other documents as called by the AO were filed by the assessee during the assessment proceedings. Further it was also submitted that the Id. CIT(A) has committed error in relying upon the explanations of the

assessee whereas no evidence on correctness of claim of unsecured loans and credits were filed by the assessee during the assessment proceedings despite ample opportunities being provided by the AO.

4. On the other hand, the Id. AR relied upon the order passed by the Id. CIT(A) and submitted that the Assessing Officer while applying NPA @ 8% as well as making disallowance @ 25% has not applied its mind, therefore, the Id. CIT(A) has correctly analyzed the factual position as well as the documents on record and while comparing two identical issues dealing with the same trade applied the appropriate net profit rate @ (0.5%) , hence, does not require any interference by this Hon'ble Court.

5. We have independently applied our mind to the order passed by the authorities below, as in the instant case the books of account and other relevant material have been destroyed in the flood of Sept. 2014 in Kashmir, however, it is a fact that books of account of the assessee were duly audited by the Chartered Accountant and exemption was granted by the CBDT through its Circular issued in 2014, from producing the books of account, if the same have been destroyed in flood in Sep., 2014 and further it was directed that the pending assessment may be completed on the basis of material/information available on record, however, the Assessing Officer neither compared any comparable cases nor considered the other factual position while making an addition and applied the Net Profit rate @ 8% in case of the assessee.

Further, with regard to the sundry and other creditors, the Ld. CIT(A) concluded that once a profit is estimated, then no further addition can be made as held by various Courts. That is, without recording a finding of a particular liability is being not genuine or

bogus. From the aforesaid reasons and analyzations , we are of the considered opinion that the Id. CIT(A) has passed very logical and reasoned order which does not suffer from any perversity, illegality and impropriety and hence, stands affirmed.

6. In the result, the appeal filed by the Revenue Department is dismissed.

Order pronounced in the open Court on 16 .08.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:16.08.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Sh. Hilal Ahmad Khan, Prop. M/s King Khan Enterprises,
Mandir Bagh, Habba Kadal, Srinagar
- (2) The ITO, Ward 3(1), Srinagar
- (3) The CIT(A), J&K, Jammu
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order