

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI**

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No.5230/Del/2018
Assessment Year: 2014-15

Sh. Lokesh Garg Prop. M/s. Garg Yarn Traders, Railway Road, Pulkhuwa, Distt. Hapur PAN AAYPG2757N	Vs	ITO Ward – 3 (4) Hapur
(APPELLANT)		(RESPONDENT)

Appellant by	Sh.Alok Gupta, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	14/01/2019
Date of Pronouncement:	14/01/2019

ORDER

PER N. S. SAINI AM:

1. This appeal filed by the assessee is directed against the order dated 23.05.2018 of the CIT(A), Muzaffarnagar.
2. The only issue involved in this appeal is that the CIT (A) erred in confirming the addition of Rs.37,18,872/-.
3. The brief the facts of the case are that during the course of assessment proceedings the Assessing Officer observed that the assessee has shown low net profit rate. He observed that the assessee has not filed before him documentary evidences like purchase bills, sales bills. No books of account such as ledger, Cash book, Bank book and journal are produced. No stock register was produced. Therefore, he held that in absence of the books of accounts net profit shown by the assessee is not acceptable. He observed that on total turnover of Rs.21,28,34,094/-. Assessee has disclosed gross profit of Rs.23,37,424/- and net profit of Rs.5,93,942 which

works out to gross profit rate of 1.09% and net profit rate of 0.28% which is very low. Therefore, he rejected the books of accounts of the assessee by invoking the provision of section 145 of the Act and computed income of the assessee by applying net profit rate of 2% on the total turnover which work out to Rs.42,56,681/- and treated the same as income of the assessee from business in place of Rs.5,93,742/- shown by the assessee.

4. Being aggrieved by this order of the Assessing Officer the assessee filed appeal before the CIT(A).

5. The CIT(A) confirmed the action of the Assessing Officer on the ground that the authorized representative of the assessee has filed comparable results from the past years in the case of the assessee itself. In absence of any corroborating evidence/ details such results from past years cannot be applied in the present year as each year is a different year for the purpose of Income Tax proceedings. Once books of accounts have been rejected the Assessing Officer has to make an assessment in the manner provided u/s 144 of the Act. On the basis of material and other information he observed that the Assessing Officer has been fair and reasonable in applying rate profit @ 2% in this case to compute business income. Hence, he confirm the addition of Rs.37,18,872/- made by the Assessing Officer and dismissed the ground of appeal of the assessee.

6. Before me the AR of the assessee submitted that the CIT(A) was not justified in confirming order of the Assessing Officer in computing the income for the year under appeal of the assessee applying net profit rate of 2% on the turnover. He submitted that he is not challenging the rejection of books of accounts by the Assessing Officer u/s 145 of the Act as he agreed that the assessee failed to produce the books of accounts before the Assessing Officer that assessee same were also not produced before the CIT(A). His only argument was that looking to the past accepted results of the assessee where the assessee has shown net profit at the rate varying from 0.28% in the assessment year 2013-14 to 0.21% in the assessment year 2011-12 the computation of income of the assessee by applying the rate

of 2% on the turnover was on a higher side. He prayed that the same may be reduced to 0.50% of the total turnover of the assessee.

7. On the other hand the Ld. DR vehemently opposed the submissions of the AR of the assessee and submitted that where the assessee failed to produce the books of accounts and other evidences, the CIT(A) was perfectly justified in confirming the action of the Assessing Officer in computing the income of the assessee by applying rate of 2% on the gross turnover of the assessee.

8. I have heard the rival submissions and perused the orders of the authorities below and materials available on record. In the instant case the undisputed facts of the case are that the assessee failed to produce the books of accounts and other supporting documents before the Assessing Officer. Therefore, the Assessing Officer rejected the book result of the assessee and estimated income of the assessee for the year under appeal by applying the net profit rate of 2% on the gross turnover of the assessee. The same was confirmed in appeal by CIT(A).

9. Before me the rejection of books of accounts by the Assessing Officer is not in appeal. The only grievance of the assessee in the appeal is that the computation of Income of the assessee after rejecting its books of accounts by applying the rate of 2% on the gross turnover of the assessee is on higher side. It is the submission of the AR of the assessee that the assessee has shown net profit rate of 0.21% to 0.28% in the past preceding three assessment years 2011-12 to 2013-14 and considering the same the net profit rate for the year under appeal should be determined at 0.50%.

10. On the other hand the Ld. DR has vehemently opposed the submissions of the AR of the assessee on the ground that the assessee failed to produce the books of account and evidences before the Assessing Officer.

11. In the above facts and circumstances of the case I am of the considered view that after rejecting the books of account of the assessee the Assessing Officer cannot make a wild guess of the income of the assessee.

He has to compute the income of the assessee on some proper basis. In the case of the assessee the proper basis is the past accepted results of the assessee. It is not in dispute that in the assessment made for the assessment year 2011-12 to 2013-14 net profit @ 0.21% to 0.28% shown by the assessee has been accepted by the department. Therefore, I find force in the arguments of the AR of the assessee that considering the past results of the assessee the income for the year under appeal should be computed by applying the rate of 0.50%. Therefore, I accept the argument of the AR of the assessee and set aside the orders of the lower authorities and direct the Assessing Officer to compute the income for the year under appeal of the assessee by applying the rate of 0.50% to the gross turnover of the assessee. Thus, the grounds of appeal of the assessee are partly allowed.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 14.01.2019.

Sd/-
(N. S. SAINI)
ACCOUNTANT MEMBER

Dated:14.01.2019.

Neha

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

Assistant Registrar
ITAT, New Delhi

Date of dictation	14.01.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	14.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	