

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

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2945/Del/2018
Assessment Year: 2014-15

SIDHARTHA SAWHNEY RAJA RAM NIWAS, SHARVAN NATH NAGAR, HARIDWAR, UTTARAKHAND (PAN: DEEPS5760C)	Vs.	ITO, WARD-2, HARIDWAR
(Appellant)		(Respondent)

Assessee by	Sh. Piyush Kumar Kamal, Adv. & Sh. DK Gandhi, Adv.
Department by	Sh. S.L. Anuragi, Sr. DR.

ORDER

The assessee has filed the appeal against the impugned order dated 28.2.2018 passed by Ld. CIT(A), Haldwani relevant to assessment year 2014-15 on the following grounds:-

1. That the Ld. CIT(A) order is against law and facts of the case which was selected under CASS for limited scrutiny but in appeal applied net profit rate of 3.5%.
2. That the Ld. CIT(A) did not consider the other similar cases where in appeal rate of 2.7% gross profit was applied and approved, whereas the appellant had disclosed 3.95% as gross profit which ought to have been accepted.
3. That in CASS only two points were to be considered (i) large other expenses claimed in profit and loss account and (ii) mismatch in the sale turnover reported in audit report in ITR. Both points were explained.

4. That the accounts have been kept in similar fashion as in the past always duly audited. This year the profit was higher than the past years which were accepted. The Ld. CIT(A) did not consider all facts and there is no consistency.
5. That the audited accounts having been filed which ought to have been accepted and GP rate has been separately worked out, still the Ld. CIT(A) believe in High pitched assessment.
6. That the Ld. Appellate authority did not consider the different points, but considered in negative way approving the line of AO.
7. That the principle of real income was not considered where as the Apex Court clearly held to assess the real income, nor there is any consistency in approach.
8. That the appellate craves leave to add amend and alter and vary and withdraw any grounds of appeal before the same is heard or disposed of.
9. That no interest is payable as charged.

2. The brief facts of the case are that the assessee filed its e-return of income declaring income of Rs. 4,80,250/- on 02.7.2014, which was later selected under limited scrutiny through CASS. Accordingly, notice u/s. 143(2) of the Income Tax Act, 1961 (in Short "Act") was issued. Later on, the case was transferred to Ward 1(3)(3), Hardwar. Notice u/s. 142(1) of the Act alongwith questionnaire was issued on 25.4.2016 was issued. In response to these notices the AR of the assessee attended the assessment proceedings and furnished the computation of income, copies of bank statements, Form No. 26AS. AO observed that assessee

is mainly a transport contractor and has shown gross receipts at Rs. 3,10,95,532/- and in the absence of regular books of account and supporting bills/ vouchers, he estimated the net profit of the assessee @8% of gross receipts at Rs. 24,87,642/- from his business and assessed the income at Rs. 24,92,580/- u/s. 143(3) of the Act vide order dated 08.11.2016. Against the aforementioned assessment order dated 8.11.2016, assessee appealed before the Id. CIT(A), who vide his impugned order dated 27.02.2018 and partly allowed the appeal of the assessee by apply a net profit rate of 3.5% on the assessee's gross receipt i.e 3.5% on Rs. 3,10,95,532/- and directed the AO to recomputed the assessee's net profit accordingly. Aggrieved with the impugned order the assessee is in appeal before the Tribunal.

3. Ld. A.R. for the Assessee has stated that the case of the assessee was selected under CASS for limited scrutiny but in appeal applied net profit rate of 3.5%. He further submitted that Ld. CIT(A) did not consider the other similar cases where in appeal rate of 2.7% gross profit was applied and approved, whereas the assessee had disclosed 3.95% as gross profit which ought to have been accepted. He further submitted that in CASS only two points were to be considered (i) large other expenses claimed in profit and loss account and (ii) mismatch in the sale turnover reported in audit report in ITR and both the points were explained. That the accounts have been kept in similar fashion as in the past always duly audited. This year the profit was higher than the past

years which were accepted. The Ld. CIT(A) did not consider all facts and did not follow the rule of consistency. Hence, he requested to follow the rule of consistency in the case of the assessee. He filed a small Paper Book containing pages 1 to 47 in he has attached the synopsis; copy of 1st appeal order in Gurunank Roadlines; copy of 1st appeal order in Tejinder Singh Sindhu, Haridwar, copy of trading profit and loss balance sheet details of expenses and power of attorney. Accordingly, he requested to apply the 2.7% net profit rate on the assessee's gross receipt instead of 3.5% which is very high.

4. On the contrary, Ld. DR heavily supported the order of the Ld. CIT(A) and submitted that Ld. CIT(A) has reasonably estimated the NP rate @ 3.5%, which does not need any interference.

5. I have considered the rival submissions and gone through the orders of lower authorities as well as the Paper Book filed by the Assessee which contains pages 1 to 47 in which he has attached the synopsis; copy of 1st appeal order in Gurunank Roadlines; copy of 1st appeal order in Tejinder Singh Sindhu, Haridwar, copy of trading profit and loss balance sheet details of expenses and power of attorney. I find that the sole issue for adjudication is estimation of Net Profit Rate on the gross receipt of the assessee. I further note that Ld. CIT(A) has noted in his impugned order that the rate taken by the AO was high and has not been justified by the AO by any comparable cases or its own past years disclosed profit. Hence, he applied the Net Profit rate of 3.5% on the assessee's gross receipt i.e. 3.5% on Rs. 3,10,95,532/- and directed the AO to recomputed the assessee's Net Profit accordingly. I have also perused the 1st appeal orders dated 20.9.2017 relevant for AY 2014-15 of the Ld. CIT(A), Dehradun in the case of Gurunank Roadlines and

Tejinder Singh Sindhu, Haridwar wherein on identical facts and circumstances of the case i.e. where the AO had estimated 8% NP and Ld. CIT(A) in the aforesaid appeals, has applied the 2.7% NP. But the Ld. CIT(A), Haldwani in the case of the present assessee has applied 3.5% NP rate on the gross receipts, which is in my view is on slightly higher side and needs to be restricted. Keeping in view of the facts and circumstances of the case and the precedents, as aforesaid and in the interest of justice, I deem just and proper to estimate the NP rate @3% instead of NP rate @3.5% on the gross receipt of Rs. 3,10,95,532/-. I hold and direct accordingly. The AO is directed to re-compute the assessee's net profit @ 3% accordingly.

6. In the result, the appeal of assessee is partly allowed.
The decision is pronounced on 15-01-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 15.01.2019

"SRBHATNAGAR"

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi