

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

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5309/Del/2018
Assessment Year: 2012-13

RAMA DAIRY, BULANDSHAHR, SIYANA ROAD, C/O RAJ KUMAR & ASSOCIATES, CAS, L-7A (LGF), SOUTH EXTENSION, PART-2, NEW DELHI - 49 (PAN: AABFR0404Q)	Vs.	ACIT, CIRCLE BULANDSHAHR UTTAR PRADESH
(Appellant)		(Respondent)

Assessee by	Sh. Raj Kumar, CA
Department by	Sh. S.L. Anuragi, Sr. DR.

ORDER

The assessee has filed the appeal against the impugned order dated 24.5.2016 passed by Ld. CIT(A), Ghaziabad relevant to assessment year 2012-13 on the following grounds:-

1. That under the facts and circumstances rejection of books of accounts, estimation of NP rate as 1.13% against declared at 0.70% and consequentially trading addition of Rs. 11,58,540/- is illegal, unwarranted and unsustainable in law as well as on merits.
2. That without pointing out any defect in the audited books of accounts maintained in the normal course of business, which are supported by proper evidences, the act of rejection of books of accounts and estimation of NP is illegal and unwarranted.

2. The brief facts of the case are that the assessee filed its e-return of income declaring income of Rs. 18,97,310/- and the same was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). Subsequently, the case of the assessee was selected for scrutiny through CASS and notice u/s. 143(2) of the Act was issued on 5.9.2014. Further notice u/s. 142(1) of the Act alongwith questionnaire was issued on 23.1.2015 and in response to the same, the AR of the assessee attended the proceedings from time to time and filed the written submissions, supporting documents, details and explanations. The assessee is a partnership firm and derives income from business of whole sale trading of milk, and the assessee firm is not manufacturing any time. During the year under consideration. gross receipt was declared at Rs. 27,04,28,953/-, gross profit at Rs. 52,90,988/- and net profit was shown at Rs. 18,97,307/-. The net income was shown at Rs. 18,97,310/-. The balance sheet tallies at Rs. 5,91,98,712.51 and the books of accounts were audited as per provisions of section 44AB of the Act and copy of audit report alongwith balance and P&L account was furnished during assessment proceedings and books were produced before the AO. During the course of assessment proceedings the assessee was required to file the details and justification of low NP and in compliance of the same the counsel of the assessee filed the details of gross receipt / turnover, gross profit alongwith comparison of the sme with result of last two years, details thereof are mentioned vide para no. 3 at page no. 2 of the impugned order. After considering the same, the

AO observed that since the NP rate in the year under consideration was 0.70% against 1.11% in AY 2011-12 and 1.13% in AY 2010-11, so the AO adopted NP rate of 1.13% of AY 2010-11, which brought an addition of Rs. 11,58,540/- in net profit and assessed the income of the assessee at Rs. 30,55,850/-, vide order dated 30.3.2015 passed u/s. 143(3) of the Act. Against the aforementioned assessment order dated 30.3.2015, assessee appealed before the Id. CIT(A), who vide his impugned order dated 24.05.2016 has dismissed the appeal of the assessee by upholding the action of the AO. Aggrieved with the impugned order the assessee is in appeal before the Tribunal.

3. Ld. A.R. for the Assessee has stated that lower authorities erred in rejection of books of accounts, estimation of NP rate as 1.13% against declared at 0.70% and consequentially trading addition of Rs.11,58,540/-. He further submitted that AO has not pointed out any defect in the audited books of accounts maintained in the normal course of business, which are supported by proper evidences, the act of rejection of books of accounts and estimation of NP is illegal and unwarranted. It was further submitted that proper books maintained, examined and no discrepancy found and the accounts are audited with clean report. He further submitted that lesser NP rate than earlier years cannot be a reason for rejection of books and for estimation. He further submitted that every hear is independent. He further submitted that AO was not justified in

adopting the result of AY 2010-11 also. In view of above contentions, he relied upon the following case laws:-

- CIT vs. Poonam Rani 326 ITR 223 (Del.)
- CIT vs. OM Overseas 315 ITR 185 (P&H).
- ACIT vs. Budhalal & Co. 47 SOT 27 (Ahd.)
- DCIT vs. Vishwanath Prasad Gupta 137 TTJ 385 TM
Jabalpur
- CIT vs. Ludhiana Steel Roll Mills 295 ITR 111 (P&H)
- Aluminium Industries (P) Ltd. vs. CIT 80 Taxman 184
(Gau.)

4. On the contrary, Ld. DR heavily supported the order of the Ld. CIT(A) and submitted that AO has reasonably estimated the NP rate, 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 case laws and assessee's Paper Book containing pages 1-72 in which he has attached the Audited Financial Statement (AY 2012-13); Comparative Chart of Gross Profit & Net Profit; Reply to AO dated 23.2.2015; Submission to CIT(A) dated 13.5.2016; Audited Financial Statement (AY 2010-11) and Audited Financial Statement (AY 2011-12). I note that AO observed that since the NP rate in this year was 0.70% against 1.11% in AY 2011-12 and 1.13% in AY 2010-11, hence, he adopted the NP rate of 1.13% of AY 2010-11, resulting addition of Rs. 11,58,540/- in net profit and also rejected the

books of account. I find that assessee has maintained proper books and the same were examined and no discrepancy was pointed out by the AO. Therefore, I find considerable cogency in the contention of the Id. counsel for the assessee that lesser NP rate than earlier years cannot be a reason for rejection of books and for estimation of NP without pointing out any discrepancy in books and supporting documents, therefore, the estimation adopted by the AO is not tenable.

5.1 I note that Hon'ble Punjab & Haryana High Court in the case of CIT vs. Om Overseas 315 ITR 185 (P&H) has observed that when the books of account are regularly maintained and no specific defect in the books of account, is pointed out by the AO, the books result cannot be rejected simply there is fall in GP.

5.2 It is also noted that the ITAT, Jabalpur in the case of DCIT vs. Vishwanath Prasad Gupta 137 TTJ 385 TM Jabalpur has held that mere low profit, by itself, cannot justify an addition – GP rate depends on many factors and same cannot be constant from year to year – AO has not pointed out any mistake in the books of account of the assessee- Thus, there was no justification for making the impugned addition.

5.3 Keeping in view of the facts and circumstances of the case and respectfully following the precedents, as aforesaid, I am of the considered view that without pointing out any defect in the audited books of accounts maintained in the normal course of business, which

are supported by proper evidences, the action of rejection of books of accounts and estimation of NP is not sustainable in the eyes of law, hence, I direct the AO to adopt NP rate for the year in dispute as declared by the Assessee i.e. @0.70% and re-compute the income of the assessee accordingly.

6. In the result, the appeal of assessee is allowed in the aforesaid manner.

The decision is pronounced on 31-01-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 31-01-2019

"SRBHATNAGAR"

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi