

आयकर अपीलार्थ अधीकरण, अहमदाबाद आयपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
‘D’ BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1437/AHD/2013

ज्जधासण वष/Asstt. Year: 2009-2010

Shri Vishal Madhusudan Chokshi, Prop. Shreenath Transport, 3-A, Sarvodaya Soc. Jawahar Chowk, Maninagar, Ahmedabad-380008. PAN: AAYPC9709J	Vs.	A.C.I.T,(OSD), Cir.9, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divetia and Shri Mehul Talera, A.Rs
Revenue by :	Shri Praveen Kumar, Sr.D.R

सुनवाई कातारख/Date of Hearing : 23/01/2019

घोषणा कातारख/Date of Pronouncement: 20/02/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-10, Ahmedabad [CIT(A) in short] vide appeal no. CIT(A)-XV/ACIT/Cir-9/431/11-12, dated 20/02/2013 arising in the matter of assessment order passed under section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 19/12/2011 relevant to Assessment Year (AY) 2009-10.

2. The assessee has raised the following grounds of appeal.

1.1 *The order passed u/s.250 on 20.2.2013 for A.Y. 2009-10 by CIT(A)-XV, Abad partly confirming the addition is wholly illegal, unlawful and against the principles of natural justice.*

1.2 *The Ld.CIT(A) has grievously erred in law and or facts in not considering fully and properly the explanation furnished and evidence produced by the appellant.*

2.1 *The Ld. CIT(A) has grievously erred in law and or on facts in upholding the rejection of book results disclosed by the appellant, though the conditions provided u/s. 145 were not fulfilled. The Id. CIT(A) has failed to appreciate that the AO had not rejected the book result shown by the appellant and hence, the action on part of CIT(A) was prima facie illegal, and unlawful.*

2.2 *That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld the rejection of book results disclosed by the appellant.*

3.1 *The Ld. CIT(A) has grievously erred in law and on facts in estimating GP at 22% and thereby making an addition of Rs. 66,08,953 as against book loss of Rs.42,26,870 declared by the appellant. The enhancement of income so made by CIT(A) was wholly illegal, unlawful and against the principles of natural justice.*

3.2 *Without prejudice to above and in the alternative, the estimation of GP and consequential addition made by CIT(A) were highly excessive and calls for substantial reduction .*

4.1 *The Ld. CIT(A) has grievously erred in law and/or on facts in confirming the disallowance of Rs. That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have confirmed the disallowance of Rs.18,000 u/s.40(a)(ia).*

3. At the outset the Ld. Counsel for the assessee before us submitted that he had been instructed by the assessee not to press the confirmation of the addition made by the Ld.CIT (A) for Rs. 18,000/- Therefore, we dismiss the same as not pressed.

4. The only issue raised by the assessee against the confirmation of the addition made by the AO for Rs. 66,08,953/-on account of undisclosed receipts.

5. The facts of the case are that the assessee in the present case is an individual and engaged in the business of transportation under the name and style M/s Shreenath Transport company. The assessee in the year under consideration assessee has filed the return of income declaring loss of Rs. 53,28,582/- only.

6. The AO during the assessment proceedings found that the assessee during survey proceedings under section 133A of the Act has admitted the unaccounted receipt of Rs. 25 lacs from its proprietary concern and unaccounted receipt of Rs. 66.97 lacs on account of sale of the truck aggregating to Rs. 91.97 lacs only. But the assessee filed the return of income declaring loss. Accordingly, the AO rejected the loss claimed by the assessee and assessed the income at Rs. 91.97 lacs treating the amount described above as undisclosed income of the assessee.

7. The assessee carried the matter to the Ld.CIT (A) who rejected the books of accounts of the assessee and estimated the gross profit at the rate of 22% of the gross receipts. Accordingly, the total income was determined by the Ld.CIT (A) in the manner reproduced as under:

			2,61,14,000
<i>Add:</i>	<i>Other income (Schedule 10)</i>	26,59,824	
	<i>Profit on sale of fixed asset</i>	54,51,145	
	<i>Profit on sale of fixed</i>		

	<i>Asset declared</i>	<u>66,97,000</u>	<u>1,21,48,145</u> 3,82,62,145
<i>Less:</i>	<i>Administrative exp. (Schedule 12)</i>	41,03,371	
	<i>Interest & Finance charges (Schedule 13)</i>	<u>1,22,62,720</u>	<u>1,63,66,091</u> 2,18,96,054
<i>Less:</i>	<i>Depreciation as per books of accounts</i>		<u>1,95,13,971</u>
	<i>Profit from the proprietary concern M/s Shreenath Transport Co.</i>		<u>23,82,083</u>

6.2 (c) (vi) In conclusion, the A.O's treatment of disclosure of Rs.91.97 lakh is not correct as 'income from other sources'. At this place, the A.O's contention for rejection of books of accounts are upheld and through gross profit estimation, the income from appellant's prop. business M/s Shreenath transport corporation under the head 'profit' & gains from business & profession was computed at Rs.10,09,752/-. This working is with the assumption that appellant's disclosure of unaccounted receipt of Rs.25,00,000/- is already included in G.P. estimation since there was no correctness or complexness in such disclosure. Further, while computing this income, the appellant was allowed deduction of depreciation at Rs.91,82,343/- as per I.T. Act which inter alia is after considering the effect of appellant's disclosure of Rs.66.97 lakh as 'on money' on sale of truck as per section 50 of the I.T. Act.

The ground is therefore partly allowed.

8. Being aggrieved by the order of Ld.CIT (A) assessee is in appeal before us.
9. The Ld. AR before us filed a paper book running from pages 1 to 90 and submitted that the receipt on account of sale of Trucks could not be added

to the total income of the assessee. It is because this is a capital receipt which needs to be adjusted against the WDV of trucks as shown in the books. As such the amount of receipt from the sale of trucks needs to be reduced from the block of assets as per the provisions of section 50 of the Act.

10. On the other hand the Ld. DR vehemently supported the order of authorities below.

11. We have heard the rival contentions and perused the materials available on record. From the preceding discussion, we note that the assessee has not challenged the rejection of the books of accounts. There remains no ambiguity that in the event of rejection of the books of accounts the only basis to determine the income is to estimate the profit on a reasonable basis. Accordingly the Ld.CIT (A) estimated the gross profit of the assessee at the rate of 22% of the sale proceeds of Rs. 11,87,38,319.00 and worked out the gross profit at Rs. 2,61,14,000.00 only as discussed above. As the assessee has not challenged the gross profit worked out above, we draw the conclusion that the amount of gross profit worked out above has reached to its finality.

11.1 Now the amount of gross profit as worked above needs to be reduced from the following items to arrive at the net profit:

i.	Administrative expenses	Rs. 41,03,371.00
ii.	Interest & finance charges	Rs. 1,22,62,720.00
iii.	Depreciation as per books	Rs. <u>1,95,13,971.00</u>
	Total	Rs. <u>3,58,80,062.00</u>
	Balance Net profit as per books	Rs. -97,66,062.00

11.2 Now the above profit as per books needs to be adjusted in the manner as below:

Net profit as per books	Rs.	-97,66,062.00
Addition: addition as per computation of the assessee	Rs.	<u>2,03,78,776.00</u>
		1,06,12,714.00
Subtraction: Bank Interest	Rs.	20,619.00
Dep as income tax	Rs.	<u>91,82,343.00</u>
		<u>92,02,962.00</u>
Balance taxable income:		<u>14,09,752.00</u>

11.3 From the above, it is clear that there was no addition made by the Ld CIT(A) on account of receipts from the sale of trucks. Thus once there was no addition made by the Ld.CIT (A) on account of sale of trucks as income of the assessee, there is no question of reducing the same from the taxable income of the assessee.

11.4 However, we note that the Ld.CIT (A) has worked out taxable income at Rs. 10,09,752/- as evident from its finding placed on page 25 of its order. But as per our calculation as mentioned above the taxable income works out at Rs. 14,09,752/- only. Thus the difference of Rs. 4 lacs is arising on account of a calculation error in the order of the Ld.CIT (A). As such the Ld.CIT (A) has made a calculation error inadvertently in determining the taxable income. The relevant finding of the Ld.CIT (A) is reproduced as under:

“The appellate computed total loss from the head income from business and profession at Rs.51,99,201/- the same will therefore be replaced at profit of Rs.10,09,752/- (66,08,953 – 51,99,201).”

From the above, it is clear that the figure of taxable income will work out at Rs 14,09,752/- after reducing the sum of Rs. 51,99,201/- from Rs.

66,08,953/- only. Thus, taxable income from the business of the assessee is of Rs. 14,09,752/- only.

11.5 Accordingly we disagree with the allegation of the assessee that there is the addition of the receipts of Rs. 66,97,000/- on account of sale of trucks.

11.6 We also find pertinent to mention that, the Ld.CIT (A) has further omitted to make the addition of income of Rs. 26,59,824/- claimed by the assessee as other income. However, we find that the Revenue has not challenged the same by filing the appeal before us. Therefore we refrain ourselves from adjudicating the same.

11.7 In view of the above we hold that there is no infirmity in the order of the Ld.CIT (A). Hence we decline to interfere in the order of the Ld.CIT (A). Hence the ground of appeal of the assessee is dismissed.

12. In the result appeal of the assessee is dismissed.

Order pronounced in the Court on 20/02/2019 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 20/02/2019
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(True Copy)

आदेश क० त० प्रत/Copy of the Order forwarded to :

1. अपीलार्थ / The Appellant
2. प्रत्यर्थ / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. त्रिभागीय प्रत्यक्ष, आयकर अपीलार्थ अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलार्थ अधिकरण, अहमदाबाद / ITAT, Ahmedabad