

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3040/Del/2013  
(Assessment Year: 2009-10)

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| Aftab Ahmed,<br>Anurag Maheshwai and Co.,<br>2 <sup>nd</sup> Floor, Raghav Plaza, Court<br>Road, Saharanpur,<br>PAN: AIAPA2731<br>(Appellant) | Vs. | ITO,<br>Ward-1,<br>Saharanpur<br>(Respondent) |
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|-----------------------|---------------------------|
| Assessee by :         | Shri PS Kashyap, CA       |
| Revenue by:           | Shri Janardan Das, Sr. DR |
| Date of Hearing       | 18/02/2019                |
| Date of pronouncement | 06/05/2019                |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A), Muzaffarnagar dated 05.03.2013 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-
  - "1. *The addition made by the Id AO on account of addition in gross profit of the is bad in law and on facts and is based on conjectures and surmises.*
  2. *The addition on account of introduction of capital by the Id AO in law and facts."*
3. Brief facts of the case shows that assessee is an individual who is running a trading business of livestock and manufacturing the raw buffalo meat on wholesale basis. The assessee filed his return of income on 30/9/2009 declaring an income of INR 271480/-. The assessment u/s 143 (3) of the act was passed on 26/12/2011 in which the learned assessing officer has made the total addition of INR 53,68,097/-. Out of these, only two additions are contested before us (1) on account of low gross profit rate adopted by the assessing officer amounting to INR 75014/-, (2) the addition on account of capital introduction of INR 2 05680/-. The assessee preferred an appeal before the learned CIT – A

who passed an order on 5/3/2013 partly allowing the appeal of the assessee and therefore the assessee is in appeal against both these addition sustained by the learned CIT – A.

4. The 1<sup>st</sup> ground of appeal is with respect to addition on account of gross profit. The facts relating to the above addition shows that that this is the 1<sup>st</sup> year of the business of the assessee and assessee on a total sales of INR 29,600,000 disclosed a gross profit of 2.25 percentage. The learned assessing officer noted that in case of another company ALM industries Ltd has declared a gross profit rate of 8.05% on the total sales of Rs. 2875770211/- for the assessment year 2009 – 10 and therefore the learned AO therefore made an addition of INR 7 5014/- estimating the gross profit at the rate of 2.5%. On appeal before the learned CIT – A assessee contested the same raising several arguments mentioned at page number 10 – 14 of his order. The learned CIT – A also obtained the remand report of AO and rejoinder of assessee. The learned CIT – A in para no. 3.3.5 of his order has confirmed the addition stating that in case of some other assessee dealing in similar trade for assessment year 2009 – 10 reasonable gross profit was estimated and adopted the rate of 2.50%. He further noted that in case of ALM industries Ltd the gross profit rate of 8.5% is shown. He further rejected the argument of the assessee that the comparable cases details were not made available to assessee as assessee himself brought the details downloaded from the website. The learned CIT – A also stated that in the case of the business of the assessee purchases could never be subject to cross verification and appellant is at liberty to manipulate the accounts.
5. Aggrieved by the order of the learned CIT – A, the learned authorised representative submitted a detailed written submission stating that there is no allegation on the assessee that it has manipulated its books of accounts. He further stated that the books of accounts of the assessee are audited u/s 44AB of the act. He further stated that there is no allegation of any sales made out of the books or none of the purchases have been found to be fictitious. In view of this he submitted that the AO does not have a right to disturb the book results shown by the assessee.

6. The learned departmental representative vehemently supported the orders of the lower authorities. It was stated that when in comparable cases the usual gross profit has been disclosed then it is very unusual that assessee has shown a very low gross profit.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the books of accounts of the assessee are audited and the learned assessing officer has made addition only on the basis of the comparable cases. Merely because some other assessee has shown higher profits, the addition cannot be made in the hands of the assessee without rejecting the books of the accounts of the assessee by pointing out latent, patents, and glaring defects in the books of accounts. The learned AO has failed to show that the books of accounts of the assessee are not reliable. The learned CIT – A has also confirmed the addition for the simple reason that there are chances of the manipulation of book results by the assessee as the purchases cannot be verified. This being a mere allegation and on the basis of an allegation the book results of the assessee which are audited under section 44AB of the act and no unaccounted sales or purchases have in fact been found by the lower authorities, rejection of the books of accounts and then making an addition in the hands of the assessee by comparable cases is not justified. Even the AO has not given the details of the comparable cases to the assessee. Therefore the conduct of the assessing officer also lacks fair play. In view of this we do not find any reason to sustain the addition of INR 7 5014 in the hands of the assessee on account of lower gross profit. Accordingly ground number 1 of the appeal of the assessee is allowed.
8. The 2<sup>nd</sup> ground of appeal is with respect to the addition of INR 2 05680/- on account of addition of the capital. As it was the 1<sup>st</sup> year of the business, the learned AO noted that in the month of April 2008 the assessee has made an investment of Rs. 2835000/- in purchase of live stocks for the 1<sup>st</sup> time. Therefore the assessee was directed to explain the source wherefrom such investment has been made. Assessee filed the copy of the account of buyer and copy of capital account. AO noted

that on 14/4/2008 the assessee introduced a cash of INR 50,000/- and on 4/4/2008 cash of INR 1 55680/- has been introduced as a fresh capital. The source of this cash in the books of account was not explained and therefore the learned AO made an addition of INR 205680/- to the total income of the assessee. The assessee agitated the issue before the learned CIT – A. Before the learned CIT – A in para number 3.4 it was noted that appellant did not furnish any written submission on the impugned issue. However in the remand report the learned assessing officer reiterated the same facts as stated before him. The learned AO stated that despite giving opportunity to the assessee adequately to explain the source of investment, assessee did not bother to offer any explanation. In the rejoinder assessee submitted that he is an income taxpaying since assessment year 2005 – 06 and submitted the copies of the income tax returns for assessment year 2005 – 06 – assessment year 2008 – 09. He therefore stated that as assessee is assessed to income tax the source of capital introduced out of the savings made by the assessee during the past year with stands duly explained and therefore the addition has been wrongly made. It was further stated that vide reply dated 28/11/2011 the assessee also submitted the statement of affairs for financial year 2006 – 07, 2007 – 08 and 2008 – 09 which were not stated to be incorrect by the AO. The learned CIT – A examined the assessment order and found that appellant along with the written submission has filed only capital account for assessment year 2009 – 10 and copies of the income tax returns were not filed. Therefore he stated that the contentions raised by the assessee are blatantly wrong. He further stated that on the examination of the return of income for assessment year 2009 – 10 which shows that the appellant has earned meager salary of INR 96000 only. He further held that in absence of any details of earlier earning filed either before the assessing officer or during the appellate proceedings he confirmed the addition. Accordingly the assessee has challenged the above before us vide ground number 2 of the appeal.

9. Learned authorised representative submitted that assessee has introduced capital in cash in the new business and assessee is assessed to income tax for passed so many years. He stated that copy of the income tax return and statement of affairs are placed on record which shows that assessee has a capital balance in one firm of INR 362762 as on 31/3/2009. Therefore it was stated that since the statement of affairs of the assessee clearly shows the capital investment in the business and the trade in particular is cash-based therefore there is no reason not to believe that the capital introduced in the business of the assessee in the month of April is out of the explain the sources of the assessee. He therefore stated that the addition made by the learned assessing officer is erroneous.
10. The learned departmental representative vehemently supported the order of the learned AO as well as CIT – A. It was stated that when the assessee has failed to submit anything before the assessing officer and when the details are submitted as alleged by the assessee before the learned CIT – A, on examination of the assessment folder, the learned CIT – A has proved that the statement made by the assessee is wrong. Even otherwise there is no availability of the cash with the assessee in the business and therefore the addition has rightly been made by the AO.
11. We have carefully considered the rival contention and found that the assessee has introduced a sum of INR 205 680/–, assessee has introduced the cash as on 1/4/2000 of INR 50,000 and on 4/4/2008 cash of INR 155680/–. The assessee has taken a support of his tax returns filed for assessment year 2005 – 06 onwards to show that assessee has enough cash available in his hands to introduce in the books of account on those dates. The relevant papers have been submitted by the assessee at page number 21-44 of the paper book submitted. On verification of these documents it was found that assessee has not submitted the cash book of proprietary concern of the assessee. For assessment year 2008 – 10 the assessee has filed the return of income showing total income of INR 126,000 and out of which he has made an investment of INR 20,000 and therefore the net available amount with

him is only INR 1 06, 000 for assessment year 2008 – 09 and from which the household expenditure of the assessee are required to be reduced. Therefore it cannot be believed that assessee has anything left in his hands as cash. Further for assessment year 2007 – 08 the assessee has earned an income of INR 162,000 out of which he has made an investment of INR 45,000 and he has left with the net income of INR 1 17000 from which his annual household expenditure are required to be reduced. Therefore from the records produced before us it is apparent that assessee did not have enough cash available with him to introduce in the books of his proprietary firm. Even before us the assessee did not show any credible evidences which can show that assessee has available sources of the funds to deposit with the firm. In view of this we do not find any infirmity in the order of the lower authorities in confirming the addition of INR 205680 in the hands of the assessee. Accordingly ground number 2 of the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 06/05/2019.

-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 06/05/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi