

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member**

**ITA No. 132/Agr/2018
Assessment Year: 2014-15**

Zaheer Salimuddin, C/o Deepak Singh Advocate, 2 Court of Wards Compound, Aligarh. PAN: AALPZ7409F (Appellant)	vs.	ACIT, Circle - 1, Aligarh. (Respondent)
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Appellant by	Sh. Deepak Singh, Advocate
Respondent by	Sh. Waseem Arshad, Sr. DR

Date of Hearing	01.07.2018
Date of Pronouncement	02.07.2018

ORDER

Per Laliet Kumar, J.M.:

The present appeal is filed by the assessee, feeling aggrieved by the order passed by the Id. CIT(A) on 30.11.2017 for the assessment year 2014-15 on the following grounds :

- "1. Because the Ld. CIT(A) was not justified in confirming estimation of the net profit @0.20% of the gross receipts.*
- 2. Because the learned CIT(Appeals) has erred in confirming the addition of Rs.19,16,312/- on account of over estimation of net profit.*
- 3. Because the order appealed against is contrary to the facts, law and principles of natural justice.*
The Appellant craves leave to add, delete, modify or substitute any or all the grounds of appeal at any appropriate time.

2. At the outset, the ld. AR has drawn our attention to the assessment order to the following effect :

“Another two cases, i.e., Shri Sahid Quereshi and Mohd Haneef have been completed under section 143(3) of the Act. The net profit in these two cases have been shown at 0.23% and 0.17% respectively. In the preceding year i.e. A.Y. 2013-14, the business income of the assessee was assessed at Rs.12,85,927/- from the total turnover of Rs.55,34,75,107/- and therefore, the net profit comes to 0.23% for the year. But the turnover for this is higher therefore, rate of 0.23% is on the higher side. Considering all the above facts in view net the assessment is completed by applying net profit rate of 0.20% after rejecting the books of accounts u/s. 145(3). Therefore, net profit of the assessee is computed at 0.20% of total turnover of Rs.1,47,30,75,645/- which comes to Rs.29,46,151/-. As per profit and loss account of the assessee, the net profit shown is Rs.10,29,839/-. Therefore, an amount of Rs.19,16,312/- (29,46,151 – 10,29,839) is hereby added to the total income of the assessee. Since the assessee has concealed the income by furnishing inaccurate particulars of such income, therefore, penalty proceedings u/s. 271(1)(c) of the Act are being initiated separately.”

3. On the basis of the above, it was submitted by the assessee before us that feeling aggrieved by the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income-tax(Appeals). However, the Commissioner had confirmed the findings recorded by the Assessing Officer. Now, the assessee is before us on the grounds mentioned hereinabove.

4. At the outset, it was submitted that the Assessing Officer has estimated the income by applying net profit rate of 0.20% after rejecting the books of account. It was submitted that in preceding assessment year, the net profit was 0.23% and 0.17% in respect of Mr. Sahid Quereshi and Mohd. Haneef respectively. It was submitted that the net profit of the assessee should be estimated at 0.17% instead of 0.20% and therefore, the appeal of the assessee is required to be allowed.

5. Per contra, the ld. DR relied upon the orders passed by the lower authorities and it was submitted that the assessee do not require any indulgence of this Tribunal and the orders of the authorities below are required to be confirmed.

6. In rebuttal, the ld. AR for the assessee had submitted that the Assessing Officer has wrongly considered the net profit of the two other parties despite of the fact that the nature of business of these two parties were different as they were into the trading of animals whereas the assessee is doing the business on commission. It was further submitted that even for the assessment year 2013-14, appeal of the assessee is pending adjudication before the CIT(A). Therefore, the reliance by the Assessing Officer on the net profit rate of the earlier assessment year was incorrect.

7. We have heard the rival contentions of both the parties and perused the record. The finding recorded by the lower authorities is based on the net profit rate for the assessment year 2013-14 where the net profit rate applied was 0.23%. In the present case, as noticed hereinabove, the Assessing Officer has applied 0.20% as against 0.23%, which was the net profit rate for the assessment year 2013-14. Pendency of appeal before the first appellate authority is not disputed by the ld. DR for the Revenue. Further, we notice that the Assessing Officer has merely taken the average of net profit of the two parties, namely, Mr. Sahid Quereshi and Mohd. Haneef without bringing on record comparability of the profile of the assessee with these two persons. In these peculiar facts and circumstances of the case, we have to venture into the estimation without any formal foundation. We, accordingly, hold that the lower of the two, namely, net profit rate of 0.17%, is required to be applied instead of 0.20%. Accordingly, the Assessing Officer is directed to apply net profit rate of 0.17% instead of 0.20%. Accordingly, the appeal of the assessee is partly

allowed and the order of the lower authorities is modified to the extent stated hereinabove.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court.

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-
(Laliet Kumar)
Judicial member

Dated: 2nd July, 2019

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Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

Assistant Registrar