

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2275/Ahd/2011

निर्धारण वर्ष/Assessment Year: 2005-06

Shri Dineshchandra S. Shah, Nr. Parabadi, At. Vatadra, Tal. - Khambhat - 388 620 PAN : AGEPS 0624 G	Vs.	The Income-tax Officer, Ward 3(3), Petlad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Aseem Thakkar, AR
Revenue by :		Shri Dilip Kumar, Sr DR

सुनवाई की तारीख/Date of Hearing : 27/01/2020

घोषणा की तारीख /Date of Pronouncement: 28/01/2020

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The assessee is in appeal before the Tribunal against the order of the learned CIT(A) dated 1<sup>st</sup> March 2011 passed for Assessment Year 2005-06. The assessee has taken four grounds of appeal, out of which ground no.2 is the only substantial ground of appeal; therefore, we take note of this ground which reads as under:-

*"2. The Learned Commissioner of Income Tax (Appeals) estimating the net profit of Rs.5.38 lakhs being 4% on sales of Rs.134.55 lakhs as against that of Rs.1.04 lakhs i.e. 0.8% declared by the appellant. Thereby the learned Commissioner of Income-tax (Appeals) has confirmed the addition of Rs.4.34 lakhs without any basis."*

2. The Registry has pointed out that appeal is time barred by 107 days. In order to explain delay, assessee has filed an application for condonation of delay. He has filed his affidavit along with the application. It is contended in the application that, against the assessment order, an appeal

was filed before the CIT(A) on 29<sup>th</sup> November 2007. On account of some financial crisis, the assessee has migrated to USA on 10<sup>th</sup> January 2009. The appeal was heard by the CIT(A) in his absence and order of the CIT(A) was served on his Chartered Accountant on 25<sup>th</sup> March 2011. This order has been communicated to the assessee later on; but since he was out of India, it was not possible for him to make arrangement of filing of the appeal before the Tribunal. In this way, this appeal has become time barred by 107 days.

3. After due consideration of the explanation of the assessee as well as the arguments of the learned Departmental Representative who opposed the payer of the assessee, we are of the view that there are sufficient reasons for not filing the appeal before the Tribunal in time. Therefore, we condone the delay of 107 days in filing the appeal and proceed to decide the appeal on merits.

4. The brief facts of the case are that the assessee, at the relevant time, was doing trading of tobacco on whole sale basis. He has filed his return of income on 27<sup>th</sup> October 2005 declaring total income of Rs.1,03,522/-. The Assessing Officer found that the assessee has declared GP at 8.88% of the turnover which is drastically low in comparison to last year GP declared at 23.73%. The Assessing Officer further found that the assessee has sales of Rs.134.55 lakhs. He adopted the GP @ 15% and made the addition. On appeal, learned CIT(A) has modified this addition made by the Assessing Officer. Learned CIT(A) has held that a Net Profit rate of 4% be applied on the sales of 134.55 lakhs. This exercise resulted to an addition of Rs.4.34 lakhs to the total income of the assessee.

5. Learned Counsel for the assessee submitted that the assessee has provided all the details. Except for the Gross Profit (GP), no defects have

been pointed out by the Assessing Officer. He basically emphasized that Net Profit rate adopted by the CIT(A) is on the very higher side - more particularly looking to the fact that in the subsequent year also there were losses and assessee has closed down the business. On the other hand, learned Departmental Representative submitted that there is no plausible reason available on the record in support of the books of accounts. The estimated profit has rightly been worked out by the Revenue Authorities after looking into the facts and circumstances of the case.

6. On due consideration of the above facts and circumstances, we are of the view that so far as the determination of income of the assessee by estimating the profit is concerned, the assessee is not able to give any strong reasons as to why books results should be accepted and this exercise adopted by the Assessing Officer and confirmed by the First Appellate Authority be rejected. It is an Assessment Year 2005-06. The assessee has already closed down the business and migrated to the USA. No details are available now for cross-verification, except re-appreciation of the facts and circumstances brought before the Revenue Authorities. Therefore, we do not find any error in the findings of the learned CIT(A) that the income of the assessee to be determined on an estimated basis. The next question is what should be the rate of Gross Profit or Net Profit required to be adopted. The learned Assessing Officer applied 15% Gross Profit rate for computing the income of the assessee. This method has been changed by the learned CIT(A) who determined the income by taking Net Profit rate at 4% on the total sales. To our mind, there is no scientific method adopted by the learned First Appellate Authority. Learned CIT(A), while computing 4% Net Profit rate, ought to have looked into the comparative results of others in this very line of business or by the assessee in subsequent years. Looking to the fact that, on account of continuance loss of assessee, assessee has to

close down the business and has to go out of India, we are of the view that the ends of justice would meet if we direct the Assessing Officer to calculate the income of the assessee by adopting 2% Net Profit on the sales of Rs.134.55 lakhs. In other words, addition sustained by the learned CIT(A) would be deleted by 50%. Accordingly, the appeal of the assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 28<sup>th</sup> January 2020 at Ahmedabad.**

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 28/01/2020

*By T. S. P.*

Sd/-

**(RAJPAL YADAV)**  
**VICE PRESIDENT**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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