

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "SMC" GAUHATI*

**Before Shri Sanjay Garg, Judicial Member**

आयकर अपील सं.य/ <b>ITA No. 196/Gau/2019</b> Assessment Year:2016-17
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Shri Prabir Das Betaga, Santir Bazar, Santirbazar, Tripura, 799 144(India). PAN: ASIPD0327P	<u>बनाम /</u> <b>V/s.</b>	I.T.O O/o the Income Tax Officer, Ward-Udaipur, Aaykar Bhawan, Mantribari Road, Agartala, Tripura, 799 001 (India)
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

**Hearing through video Conferencing**

अपीलार्थी की ओर से/By Appellant	None appeared
प्रत्यर्थी की ओर से/By Respondent	Shri Subhrajyoti Bhattacharya, Addl.CIT, DR
सुनवाई की तारीख/Date of Hearing	16-03-2021
घोषणा की तारीख/Date of Pronouncement	16-03-2021

**आदेश /O R D E R**

The present appeal has been preferred by the assessee against the order dated 08-03-2019 of the Commissioner of Income-tax (Appeals), Shillong [hereinafter referred to as 'CIT(A)'].

2. None has put in appearance on behalf of the assessee despite service of notice, hence, I proceed to dispose of this case *ex parte qua* the assessee after hearing the Ld.DR.

3. The assessee in this appeal has contested the validity of confirmation of addition of Rs. 17,72,312/- made by the Learned Assessing Officer ( in short, the ' Ld. AO') by taking net profit (NP) rate at 11.29 percent on undisclosed sales declared by the assessee as against claimed by the assessee @ 8%.

4. A perusal of the record shows that the assessee throughout has contested the applicability of net profit (NP) rate at 11.29% pleading that actual N.P is very low. The assessee before the lower authorities pleaded that that assessee's N.P rate should be taken at 8% u/s. 44AD of the Income-tax Act, 1961 ( in short, the 'Act') being a case where no books of account are required to be maintained. However, the assessee could not convince the lower authorities in this regard. Another submissions made by the assessee before the lower authorities had been that the Ld. AO has taken the N.P rate as declared by the assessee only on the meager sales shown by the assessee, which the department has not accepted as the actual turnover/sale was much more. That, in fact, the Accountant of the assessee neither had taken into account the actual sales made by the assessee nor the actual N.P rate of the assessee in the return of income. The income in the return of income was offered only on estimation basis by taking the small amount of sales. The Assessing Officer has not considered the plea of the assessee that with the increase of turnover, generally the N.P rate is decreased. The plea of the assessee has been that though the figure of the sales shown by the assessee has been discarded by the Ld. AO, however, he adopted the N.P rate at 11.29% shown by the assessee on an estimation basis to arrive at a particular amount of profit without considering the actual accounts. It was pleaded that the Ld. AO should have estimated the N.P rate after taking into consideration some comparable cases.

5. After hearing the Ld. DR, I find merit in the contention of the assessee made before the authorities below. Before this tribunal by way of grounds of appeal, the plea of the assessee has been that the income in the return of income was offered admittedly on estimation basis. Neither the actual sales were taken nor actual N.P rate was taken by the assessee. The assessee during the assessment proceedings fairly admitted that the turnover/sales shown by the assessee was not as per on record and he offered undisclosed sales for taxation before the Ld. AO. Considering the plea of the assessee that actual N.P rate is low and there was no basis or other evidence/comparable cases before the Ld. AO to arrive the N.P rate at 11.29%, in my view, the N.P rate of the

assessee should have been determined by the Ld. AO taking into consideration the overall facts and circumstances of the case. After considering the submissions on record by the assessee and after hearing the Ld. DR, I am of the view the estimation of profit in this case at 9% will be justified. It is accordingly ordered that the Ld. AO will take/apply the N.P rate @ 9% as against taken by him at 11.29%. Accordingly the Ld. AO will determine the income of the assessee. Assessee gets partial relief.

In view of the above, the appeal of the assessee stands partly allowed.

Order pronounced in open court at the time of hearing on  
Tuesday, 16<sup>th</sup> March, 2021.

Sd/-  
(Sanjay Garg)  
Judicial Member

दिनांक:- 16-03-2021 कोलकाता/Kolkata

\*\*PP/Sr.PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant/Assessee: Shri Prabir Das, Betaga, Santir Bazar, Santirbazar, Tripura, 799 144(India).
2. प्रत्यर्थी/Respondent-I.T.O O/o the Income Tax Officer, Ward-Udaipur, Agartala, Tripura, 799 001 (India)
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Senior Private Secretary