

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 1529/Del/2018
(Assessment Year: 2014-15)

Arshi Qureshi, Akhilesh Kumar, Advocate, Chamber NO. 206-207, Ansal Satyam, RDC Raj Nagar, Ghaziabad PAN: AAFPQ6019E	Vs.	ITO, Ward-1(1), Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Akhilesh Kumar, Adv
Revenue by:	Ms. Suman Malik, Sr. DR
Date of Hearing	22/11/2021
Date of pronouncement	22/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. ITA. No. 1529/Del/2018 is filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals), Ghaziabad, dated 22.11.2017 for assessment year 2014-15, wherein the assessee has raised the following grounds of appeal:-
 - “1. *Because, the order of learned lower authority is bad in law and against the facts and circumstances of the case and hence is unsustainable.*
 - 2 *That, Id. CIT (A) erred in sustaining the rejection of book of accounts even after accepting production of accounts by AO who has neither found any defect in accounts nor recorded any finding in terms of S. 145(3) of the Act, merely because confirmations are considered defective but without conducting any enquiry about the same.*
 3. *Because, Ld. Commissioner of Income Tax (Appeals) grossly erred in sustaining the application of NP rate @ 8% without any material and basis against the assessee and in whole disregard of the material on the record, past history etc., hence order sustaining addition is arbitrary.*

Therefore, it is prayed that the lump-sum addition of Rs.1.85.79,495/- may kindly be quashed and only as an alternative it is also prayed that the said addition is highly excessive hence prayed to be restricted to a reasonable amount as pleased by Hon'ble Court."

2. The brief facts of the case shows that the assessee is an Individual engaged in trading of buffalo meat at its own proprietary concern M/s Al Rehman Food Exports. Assessee filed return of income on 30.11.2014 declaring an income of Rs. 9,08,649/-.
3. The ld. Assessing Officer picked up the return of income for selection of scrutiny. The assessee has shown total sales of Rs. 23,22,00,000/- shown net profit of Rs. 10,08,650/-. The assessee has submitted the audited accounts wherein the gross profit of 0.47% and net profit rate of 0.43% was shown this year. In the immediately preceding year, gross profit rate was 2.74% whereas the net profit rate was 1.02%. The Assessing Officer noted that the turnover of the assessee has increased, but the gross profit rate and net profit rate has decreased. The assessee was asked to produce books of accounts, sale register, purchase register, bills, and vouchers for expenses. The show cause notice was also issued to the assessee and it was asked that why the provisions of Section 145(3) of the Income Tax Act, 1961 (the Act) should not be applied and net profit rate of 8% may not be applied on the total turnover. Consequently, the show cause notice stated that an addition of Rs. 1,85,79,495/- should be made. With respect to the creditors, 133(6) notices were issued. It remained un-responded. Therefore, show cause notice also stated that addition of Rs. 6,57,21,745/- would also be made treating the sundry creditors un-verifiable. On 26.12.2016, assessee did not produce the books of accounts. Therefore, the Assessing Officer applied provisions of Section 145(3) of the Act and made an addition of Rs. 1,85,79,495/- determining the net profit @ 8% on the total turnover of Rs. 23,22,43,698/-. Consequently the assessment order was passed on 29.12.2016 under Section 143(3) of the Act determining total income of the assessee at Rs. 1,94,88,145/- against the returned income of Rs. 9,08,650/-.
4. Aggrieved the assessee preferred an appeal before the ld. CIT (Appeals). In para No. 5.1, he noted that assessee produced cashbook, bankbook, Ledgers, and sales invoices etc., but the Assessing Officer rejected the books

of accounts under Section 145(3) of the Act, as proper books of accounts were not maintained. The Id. CIT (Appeals) held that the assessee was required to produce books of accounts, which are more than few ledger accounts produced by the assessee during the assessment proceedings. He further held that assessee has not produced quantitative tally and stock register. Therefore, he confirmed the addition on estimating profit at 8% by the Assessing Officer and appeal of the assessee was dismissed.

5. Assessee is aggrieved with the order of the Id. Assessing Officer and preferred this appeal.
6. The Id. AR submitted that the rejection of the books of accounts is not proper. He referred to the audited balance sheet filed by the assessee placed at page Nos. 1 to 15 of the paper book. He submitted that the accounts are audited under Section 44AB of the Act. He further submitted that looking to the nature of the business of the assessee quantitative tally cannot be maintained and, therefore, merely because quantitative tally is not produced the books of accounts of the assessee cannot be rejected. He submitted that during the course of assessment proceedings assessee has submitted the complete details before the Id. Assessing Officer. He referred that already letter dated 29.07.2016 the assessee submitted the basic details. Vide letter dated 6.12.2016 the assessee submitted the details of the secured loans, stock valuation, comparative figures of purchase, sales, gross profit and net profit, the details of other income comprising of duty draw back and bank interest. He referred to the letter dated 20.12.2016 wherein the assessee submitted the details of purchases and sales along with the party-wise list and their ledger accounts. Assessee also submitted the details of various charges, cold storage charges, customs charges, freight, and cartage, shipping charges and transportation charges along with their ledger accounts. It also produces the employee-wise list of the salary paid. The party-wise list along with ledger account along with sundry debtors and creditors were submitted. The details of the fixed assets were submitted. The confirmations of un-secured loans were also given. The complete details of the party-wise ledgers for all expenses were submitted. By another letter, dated 22.12.2016 the assessee submitted the bankbook, cashbook, ledger account of sales, purchases. Thus, the claim of the Id. AR

is that books of accounts are maintained in a computerized system and all the transactions were placed before the Assessing Officer. He further submitted that reason for decrease in profit is merely the foreign exchange loss incurred by the assessee. He also referred to the various decisions where in forex loss is allowable to the assessee. Thus, complete books of accounts were produced, no defects were pointed out there in, and reasons for loss are explained. Hence, the addition deserves to be deleted.

7. He submitted that assessee is in export business. Vide letter dated 26.12.2016 assessee produced the copies of the shipping bills and the bills of domestic sales. He referred to page No. 28 of the paper book wherein he tabulated the net profit from assessment years 2012-13 to assessment year 2016-17. He submitted that average of the net profit of all these years is 0.68% whereas the net profit for this year is 0.43%. He submitted that for subsequent years the net profit is 0.45% and 0.48%. He submitted that merely because the profit is marginally lower during the year, the books of accounts could not be rejected. He submitted that books of accounts could only be rejected when there is a patent defect, which is glaring in nature, is shown. He further referred to the assessment order of several other persons where the net profit ratio is accepted by the Assessing Officer in the range of 0.48% to an average of 0.73%. He otherwise submitted that assessee is dealing in the buffalo meat, which is exported and the major expenses is on account of foreign exchange gain and losses as well as the duty draw back benefit received. He otherwise submitted that in the computation of the income made by the ld. Assessing officer in the assessment order he first made an addition of returned income of Rs. 9,08,650/- and thereafter made an addition of Rs. 1,85,79,495/- estimating the profits of the business and, therefore, there is a double addition. He submitted several judicial precedents with respect to the rejection of the books of accounts and argued that the order of rejection of the books by the ld. Assessing Officer is erroneous.
8. The ld. Departmental Representative vehemently supported the orders of the lower authorities. It was submitted that assessee has not produced the books of accounts and 133(6) notices to the creditors have returned. Quantitative details have also not been submitted and there is a clear-cut

finding of the lower authorities for rejection of the books of accounts. Therefore, there is no infirmity in the orders of the lower authorities.

9. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that the assessee is engaged in the business of export of the buffalo meat. Most of the sale is export of the product. He has shown sale of Rs. 23.22 crores and shown profit of Rs. 10,08,650/-. The net profits of this year are 0.43% compared to the net profit of 1.02% in earlier year. The main reason of the lower gross profit is also stated by the ld. Assessing Officer in show-cause notice itself. The assessee has incurred a foreign currency exchange loss of Rs. 36,14,317/- during the year. The assessee has also given the annual accounts for the past two years as well as for the subsequent 5 years. The fact shows that for the year ended on 31st of March, 2013 the assessee has incurred foreign exchange fluctuation loss of only Rs. 4,68,584/- whereas for this year he has incurred such losses of Rs. 36,14,370/-. This itself shows that downfall in the net profit is because of forex loss. This is allowable business loss to the assessee. Naturally, it should not have resulted into rejection of the books of accounts. Further assessee has submitted that in the nature of business carried on by the assessee the quantitative details could not have been maintained. Mere non-maintenance of quantitative details cannot result into the rejection of the books of accounts unless latent, patent, and glaring defects are shown in the books. The arguments of the ld. Lower authorities are that assessee has not produced the books of accounts. The claim of the assessee is that it maintained the books of accounts in accounting software. Assessee produced the print out of the sales register, purchase register, bankbook, and cashbook, the ledger of the creditors and debtors, ledgers of the expenditure and the copies of the bills of export as well as domestic sales. It has also produced the details of the major expenditure. In view of this the claim of the lower authorities that assessee has not produced the books of accounts as well as the finding of the ld. CIT (Appeals) with mere production of some ledger cannot be equated with the production of books of accounts do not hold any water. The assessee has produced complete set of books of accounts. Ld CIT (A) has held that assessee has produced books of accounts. Neither the LD

AO nor LD CIT (A) stated that what else was missing in the books of accounts. Thus, despite complete books produced before lower authorities, ld. Assessing Officer has not shown any defects in the books of accounts produced by the assessee. Only Reasons for rejection of books of accounts being fact that no reply was received from certain creditors in response to notice under Section 133(6) of the Act could not have resulted into the rejection of books of accounts. Assessee has produced confirmations of those parties and no additions were made on account of creditors. Even otherwise, if a sundry creditor does not provide a confirmation under Section 133(6) of the Act, we do not find any reason to uphold the rejection of the books of accounts on that basis. The assessee has also produced the comparative chart of the gross profit for a block of 5 years starting from assessment year 2012-13 onwards. The assessee has produced assessment orders of other parties and shown a chart wherein the net profit has been accepted in the case of the other assessee in same line of business @ 0.43%. In view of this, we find that the rejection of the books of accounts by the ld. Assessing Officer is not proper without finding any latent, patent and glaring defects in the books of accounts of the assessee. Accordingly, we direct the ld. Assessing Officer to delete the addition made of 8% of the net profit and to accept the book results shown by the assessee. Accordingly, grounds Nos. 1 – 3 of the appeal of the assessee are allowed.

Order pronounced in the open court on : 22/11/2021.

Sd/- (KULDIP SINGH)
JUDICIAL MEMBER

Sd/- (PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 22/11/2021

MEHTA

Copy forwarded to

1. Appellant;
2. Respondent

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	22.11.2021
Date on which the typed draft is placed before the dictating member	22.11.2021
Date on which the typed draft is placed before the other member	22.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	22.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	22.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	22.11.2021
Date on which the final order is uploaded on the website of ITAT	22.11.2021
date on which the file goes to the Bench Clerk	22.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

