

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7607/Del/2017 : Asstt. Year : 2014-15

Sh. Shakil Ahmad, S/o Sh. Jameel Ahmad, 105, Sirsala, Nakur, Saharanpur-247001	Vs	Income Tax Officer, Ward-3(4), Saharanpur
(APPELLANT)		(RESPONDENT)
PAN No. BXQPS5969C		

Assessee by : None

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 17.01.2022

Date of Pronouncement: 03.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Muzaffarnagar dated 28.09.2017.

2. Brief facts of the case are that the assessee supplies animal carcasses to M/s Abbott Cold Storage Pvt. Ltd. The appellant has shown GP of 0.56% and NP of 0.23%. Purchases have been shown as made from various persons by making payments in cash. It was noted by the AO that the appellant has failed to produce the books of account for examination in support of trading results in, spite of give repeated opportunities during the assessment proceedings. Since, the appellant failed to produce bills and vouchers in support of amount of purchases claimed and other expenses, the AO has rejected the books of accounts and has estimated the GP @ 0.75%.

3. During the proceedings before the Id. CIT(A), it was held that the estimation of GP determined by the AO @ 0.75% against the GP declared by the assessee of 0.56% is not reasonable and augmented the GP to 2.75%.

GP declared by the assessee	: 0.56%
GP determined by the AO	: 0.75%
GP determined by the Id. CIT(A)	: 2.75%

4. We have gone through the reasons given by the Id. CIT(A) for enhancement of the GP.

1. It is gathered by the undersigned that in a similar case of Mohd. Nadeern, Prop'. Nadeem & sons, Mohalla Ghulam Auliya, Gangoh Distt. Saharanpur in the same trade gross profit of 3.78% has been shown on turnover of Rs.8.43 crore for AY 2012-13. The appellant has shown turnover of Rs.35.27 crore. It is a general business practice that for higher turnovers, gross profit declines. Therefore, in view of the facts of the case and non-verifiability of the purchases and other expenses, the appellant was required vide letter No.954 dated 22-08-2017 to explain why GP of 3% should not be applied in this case and income be computed by making enhancement of income u/s 25.1(1) of the Act. In this regard the AR has stated vide letter dated 26-09-2017 that the GP rate of 0.56% has been consistent with the preceding years in the case of the appellant and further, GP rate in the case of M/s Nadeem & Sons should not be applied in this case due to difference in assessment year, difference in turnover, difference in area of location and various other factors. The AR further argued that the appellant has been doing the business at small margins only to earn his living besides he operates in a dynamic environment in which rates of raw material as well as finished goods keeps on fluctuating.

2. *In the case of Mohd. Mehfooz, Prop. Muntzeer & Company, Idgah Road, Mohalla Qureshiyan, Gangoh, Saharanpur, the assessee has shown GP of 2.66% on turnover of Rs.49.96 crore(making sales to only 4 concerns). After considering the facts of the case and material on record, in order to meet the difference in scale of operations, it would fair and reasonable to estimate the gross profit in this case @ 2.75% as against 0.56% shown by the appellant.*

5. Thus, we find that the Id. CIT(A) has enhanced based on the gross profit levels of two entities namely, Md. Nadeem, Prop. Of Nadeem & Sons and Md. Mehfooz, Prop. Muntzeer & Company. We have gone through the details the sales, gross profit rate, net profit and NP rate for all the earlier years including the current year. The same is as under:

FY	Sales	Gross Profit	GP rate	Net Profit	NP rate
2011-12	241830068	1537310	0.64	426257	0.18
2012-13	334194752	1855981	0.55	720799	0.21
2013-14	352797435	1995618	0.56	819705	0.23

6. We also find that during the course of proceedings, the assessee has furnished and the AO has examined the detail of monthly sales & purchases, list of name and address of sundry creditors, confirmed copy of ledger account of sundry creditors, explanation about sale and purchase and copy of ledger account from Abbott Cold Storage Pvt. Ltd. Sundry creditors were also cross verified through written confirmation by the AO. The estimation of profit and GP are important elements and the assessee is entitled to know the basis and to be given an opportunity to rebut the same. Estimates framed without giving the basis for their fixation or without furnishing to the assessee. The material on which the rate of GP is arrived at or without giving an opportunity to the assessee to rebut it are

bad in law. Reliance is being placed on the following judgments:

- Dhakeshwari Cotton Mills Ltd. Vs. CIT 25 ITR 216
- Yaggina Veeraraghavulu Vs. CIT 62 ITR 528
- Nagulakonda Venkata Subba Rao Vs. CIT 31 ITR 781
- Poliseti Subbaraidu & Co. Vs. CIT 34 ITR 492
- Gadireddy P. Narasimhulu Naidu & Sons Vs. CIT 21 ITR 70

7. From the above narrated facts, we find that the decision of the Id. CIT(A) taking the gross margins of two different entities and also for different years and comparing it with that of the assessee and estimating the gross profit of the assessee without considering the location of the unit, labour supply, availability of the raw material, the material dealt by the assessee's and management factors cannot be upheld.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 03/03/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 03/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR