

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 1087/Del/2020
(Assessment Year: 2014-15)

Purna Chandra Rout,
C/o. CA MR Sahu, M Sahu &
Associates, CA. H. No. 651, FF,
Sec-10A, Near Meenakshi Public
School, Gurgaon
PAN: **AEOPR1604R**
(Appellant)

Vs. ITO,
Ward-1(4),
New Delhi

(Respondent)

Assessee by :	Shri M. R. Sahu, CA
Revenue by:	Shri Vipul Kashyap, Sr. DR
Date of Hearing	05/04/2022
Date of pronouncement	12/04/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 28.01.2017 impugned herein passed by the Ld. CIT(A)-18, New Delhi (in short 'Ld. Commissioner') u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year 2014-15.

2. The only issue raised in this appeal by the Assessee pertains to the affirmation of the addition of Rs. 41,40,753/- made by the

AO on account of unaccounted sales arises due to difference in receipts between the Assessee's books of account and as per Form No. 26AS. The Ld. CIT(A) affirmed the amount of Rs. 41,40,753/- on account of mismatch of amounts as per Form No. 26AS and gross receipts as per audited accounts on the ground that said amount was not accounted for by the Assessee in its gross receipts.

3. The Ld. AR before us relied upon the judgments passed by the coordinate benches in the cases of ShriKayyum Ahmed Vs. ITO, Ward-1(3), Meerut (ITA No. 2410/Del/2013 decided on 22.05.2015) and SohanLalAggarwal Vs. ACIT, Circle-62(1), New Delhi {(2021) 130 Taxmann.com 380-Del Tribunal}[ITA No. 986/Del/2017 decided on 11.08.2021] and submitted that in the identical situation, the Hon'ble Courts clearly held that in case of the difference between the Assessee's books of account and as per Form No. 26AS, then on the said difference, only embedded portion of the profits is to be taken into consideration and the addition is to be made thereon but entire turnover cannot be added to the income of the Assessee. For ready reference the concluding part of the judgment of the coordinate bench in the case of SohanLalAggarwal Vs. ACIT (supra) is reproduced here in below:-

“5. It is a settled proposition of law that in case of difference between the assessee's books of account and as per the TDS certificate, then on the said difference, the only embedded portion of the profits is to be taken into consideration and addition is to be made thereon. There are number of judicial pronouncements by which the principle to this effect has been laid down that the total sale cannot represent as the profit of the assessee. The net profit rate has to be adopted and once the net profit is adopted it cannot be said that there is perversity of approach. Thus, taking into consideration the entire aspect of the matter, we do not find any justification in

making the addition of the entire turnover to the income of the assessee. Having regard to the peculiar facts and circumstances of the case, we find it justified to restrict the addition at 5% of the net profit on the gross receipt of Rs. 11,93,79,537/-. The Ld. Assessing Officer is directed to grant relief to the assessee as on the above terms.

6. *In the result, the assessee's appeal is partly allowed.*

4. On the contrary though the Id. DR refuted the claim of the Assessee and vehemently supported the orders passed by the authorities below, however did not controvert the findings/decisions of the coordinates Benches.

5. We have given thoughtful consideration to the peculiar facts and circumstances of the case and are of the considered view that the case in hand is squarely covered by the judgments of the Hon'ble Coordinate benches as referred above and therefore, we are inclined to accept the said decisions and consequently while taking into consideration the net profit rate of the previous year, in our considered view, the justice would be met by confirming the addition only to the extent of 5% of the undisclosed turnover. Hence, the AO is directed to restrict the addition to such extent only.

6. In the result appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 12/04/2022.

-Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 12/04/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi