

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.857/Del/2020

निर्धारणवर्ष/Assessment Year: 2011-12

R.S. Poultry Supplier, Mohalla Jagat, Sambhal, Uttar Pradesh.	बनाम Vs.	ITO Sambhal.
PAN No. AALFR5302D		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.03.2022
उद्घोषणाकीतारीख/Pronouncement on	22.04.2022

**आदेश /O R D E R**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Moradabad dated 22.10.2019 for the AY 2011-12 in sustaining the addition of Rs. 10,52,422/- made by the Assessing Officer by estimating a net profit at 0.45% on suppressed consignment sales of 23.39 crores. Several notices were issued to the assessee. However, assessee chooses not to appear. The notice was issued through Speed Post fixing the date of hearing on 06.09.2021 and the notice returned un-served with the endorsement that "in spite of search the assessee's address could not be found and hence returned". It is also observed from records that the notice was issued once again fixing the case for hearing on 07.03.2022 and the notice was sent through

speed post, however, this notice was also returned un-served with the similar endorsement by the postal authorities. Since the notices have returned un-served, I proceed to dispose off this appeal by hearing the Ld. Departmental Representative on merits.

2. The Ld. DR submits that a survey was conducted in the premises of the assessee on 12.09.2017 by Investigation Unit-III, Gurugram and during the survey operations certain documents in the form of ledger and registers were impounded. On analyzing the materials impounded, it came to know that transactions i.e., both debit entries and credit entries totaling to Rs.48,20,66,980/- entered by the assessee with Sky Lark HC Pvt. Ltd. and Others were unearthed. Pursuant to the survey, a notice u/s 148 of the Act was issued on 28.03.2018 and in response to the said notice assessee filed return on 25.04.2018 declaring Nil income on gross turn-over of Rs.42,42,620/-. The Ld. DR submits that in the course of reassessment proceedings the assessee was required to give explanation as to why investment to the extent of Rs.24,09,07,084/- should not be treated as undisclosed income and also gross profit @6.96% on suppressed turnover of Rs.23,31,52,666/-. The Ld. DR submits that in the course of survey statements were recorded u/s 133A of the Act from Mohd. Ikrar (Munshi), wherein it was stated that RS Poultry & Supplier a partnership firm was run by Mohd. Razwan. Ld. Dr submits that a statement of Mohd. Rizwan was also recorded by the Investigation Wing by confronting the entries from the impounded documents which Mohd. Rizwan failed to

explain. Based on these documents impounded in the course of survey and the statements of the partners the assessee was required to explain as to why investment of Rs.24.09 crores should not be treated as undisclosed income and also gross profit rate at 6.69% on suppressed turnover of 23.31 crores. Ld. DR submits that assessee filed a reply on 30.03.2012 stating that, in the statement recorded u/s 131 of the Act that the transactions recorded in LPIV impounded in the course of survey are not similar to the business carried out by the assessee - RS Poultry because RS Poultry is engaged in the business of trading of chickens and in the books the value of goods received was credited and the payments made to Sky Lark Hatcheries (P) Ltd. from whom the goods were received was debited. The Ld. DR submitted that the assessee contended that the transactions with Sky Lark Hatcheries (P) Ltd. are not in the normal course of business but due to personal relationship with Sky Lark Hatcheries (P) Ltd. which used to send the goods to the assessee for consignment sale purposes and, therefore, in this business there was no involvement of investment by the assessee except to charge 0.02% for the expenses incurred by the assessee for supervision of this business. Ld. DR further submits that the assessee contended that in so far as profit percentage is concerned, there was no similar business carried on by other assesseees in that area and this was done only by Mohd. Rizwan in his individual capacity due to his personal relations with Sky Lark Hatcheries (P) Ltd. It was also contended by the assessee that similar

value of transactions of purchase and sale which the assessee entered into in AY 2018-19 with R.S. Poultry and SA Poultry and the net profit plus interest and remuneration paid to partners were shown at 0.40% and 0.28% respectively and, therefore, assessee himself offered to estimate the profit element at 0.14% on consignment sales. Ld. DR submits that since the explanation given by the assessee was not convincing, the AO rejected the books of account of the assessee and estimated the net profit at 0.44% on suppressed consignment sales turnover of Rs.23,38,71,465/- and accordingly made an addition of Rs.10,52,422/-.

3. On appeal the Ld. CIT(Appeals) sustained the addition made by the Assessing Officer. The Ld. DR therefore, submits that in view of the findings of the AO and the Ld. CIT(Appeals) the appeals deserves to be dismissed and no relief can be given to the assessee.

4. Heard the Ld. DR perused the orders of the authorities below.

5. On perusal of the assessment order, I find that assessee has himself stated that the margin in consignment sales is fixed between the consignor and the consignee which was only 0.02% as has been stated by Mohd. Rizwan in his statement recorded u/s 131 of the Act which was incurred to meet out the expenses of consignment and, therefore, there is no income as such from the transactions. I find that in the reply submitted before the AO the assessee also stated that if 0.02% is not acceptable then profit should be estimated at 0.14% i.e. (50% of the profit disclosed by the SA Poultry on total sales of 12.69 crores) made for

the AY 2018-19. I find that the AO rejected the books of account of the assessee since the documents impounded clearly showed that the assessee entered into business transactions with Sky Lark Hatcheries (P) Ltd. and since the assessee did not report these transactions in the regular books of account the explanation of the assessee was rejected. The books were rejected u/s 145(3) of the Act and estimated net profit from suppressed sales at 0.45%. In my opinion the AO is justified in rejecting the books of account as the assessee did not reflect the correct picture of its true profits as the consignment sales were not recorded in the regular books of account. However, the net profit estimated by the Ld. AO @ 0.45% is on higher side. Taking the totality of facts and circumstances into consideration and the net profit percentage shown by RS Poultry and SA Poultry for the AY 2018-19 it would be fair and just to estimate the net profit from the suppressed sales at 0.25%. Thus, the AO is directed to estimate the net profit at 0.25% of the suppressed consignment sales turnover of Rs.23,38,71,465/- and re-compute the income for the assessment year under consideration. Grounds raised by the assessee are partly allowed.

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

Order pronounced in the open court on 22/04/2022

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 22.04.2022  
\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**