

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1300/Mum/2021

(A.Ys: 2017-18)

Mr. Arun Sudesh Khanna Bldg No. 11-A, Shop No. 3, Basement Ashok Nagar, Kalyan Road, Bhiwandi – 421 302	Vs.	ITO, Ward 1(1) Mohan Plaza, Wayale Nagar, Khadak Pada, Kalyan (W) – 421 301.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADHPK1616Q		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Ms.Indira Adkil. DR

Date of Hearing	11.04.2022
Date of Pronouncement	21.04.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals), NFAC Delhi passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. In the facts and circumstances of the case the ld. CIT(A) erred in estimating the net profit of the appellant who is a trader in cloth, at 8% instead of the past tax*

*audited trends averaging about 1.5% and keeping in mind many judgements on estimation of net profit.*

*2. The appellant reverses its right to amend, alter or raise any other additional grounds of appeal before during the course of appellate proceedings.*

2. At the time of hearing, none appeared on behalf of the assessee. There is a delay of 45 days in filing the appeal before the Hon'ble Tribunal and the assessee has filed the affidavit for condonation of delay. We found the facts mentioned in the affidavit are reasonable and accordingly condone the delay and admit the appeal. Contra, Ld. DR has no specific objection.

3. The brief facts of the case are that the assessee is engaged in the business of cloth trading. The assessee has filed the return of income for the A.Y 2017-18 on 30.03.2018 disclosing a total income of Rs.7,10,230/- and the case was selected for limited scrutiny as there

are cash deposits in the assessee's bank account during the year. Subsequently the notice u/s 143(2) and 142(1) of the Act along with annexure are issued. In compliance the assessee has submitted the details through ITBA system. On perusal of the facts, the assessee has made cash deposits in bank account with the Central Bank of India and the Assessing Officer (A.O.) has issued notice u/s 133(6) of the Act on the bank to find the factual position of deposits in the bank account. The A.O required the assessee to substantiate the cash deposits made in the bank account. As per the information, the assessee has made a cash deposit of Rs.1,65,89,730/- in the financial year 2016-17 and the assessee has also deposited the cheques worth of Rs. 1,78,54,921/- in the bank account. Whereas, the total turnover disclosed by the assessee is only of Rs.1,15,00,000/-. The A.O found that the assessee has failed to explain

the nature of the deposits into the bank account and issued a show cause notice and wanted to estimate the income @ 10% of the undisclosed receipts. Whereas the assessee has filed the information through ITBA explaining the turnover and profit margin for earlier and subsequent financial years. The A.O has considered the facts that the assessee has filed the return of income on estimation of income@8% u/s 44AD of the Act and the assessee has failed to disclose the actual turnover. The A.O is of the opinion that the disclosure made by the assessee cannot be properly supported by the evidences and estimated income @10% of turnover which works out to Rs. 22,76,465/- and assessed the total income of Rs. 29,86,695/- and passed the order u/s 143(3) of the Act dated 16.12.2019.

4. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The CIT(A) considered the

grounds of appeal, submissions of the assessee and findings of the A.O and has restricted the addition @ 8% of the turnover and partly allowed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee.

5. We heard the Ld. DR submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the assessee could not explain the turnover therefore the A.O has estimated the income @10% of the total turnover. Whereas the CIT(A) has granted the relief to the extent of 8%. We find that the assessee is filling the return of income regularly and is engaged in the business of trading of cloths but the fact remains that the assessee could not explain the cash deposits with respect to the transactions that they are part of business receipts therefore to consider the lower percentage and whereas credits in bank account are more than the turnover. The A.O. has provided ample opportunities to the assessee to substantiate the claim. We considering the factual aspects, circumstances and nature of business

with a rider that the addition is restricted @4% as against 8% sustained by the CIT(A) only for this assessment year only. Accordingly, we modify the CIT(A) order to the extent of 4% and partly allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 21.04.2022.

Sd/-

(GAGAN GOYAL)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 21.04.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai