

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.5779/Del/2018
(ASSESSMENT YEAR 2010-11)**

Shri Vikram Singh Mohalla Ahirwada Opp. State Bank of India Badshahpur, Gurgaon. PAN-BSKPS 5948A (Appellant)	Vs.	Income Tax Officer Ward-4(5) Gurgaon. (Respondent)
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Appellant By	None
Respondent by	Sh. Toufel Tahir, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-1, Gurgaon [Ld. CIT(A)", for short], dated 29.06.2018 for Assessment Year 2010-11. Grounds taken in this appeal of Assessee are as under:

"1. That the impugned appellate order dated 29.06.2018 passed by the Hon'ble CIT(A) is based on conjectures & surmises and deserves to be set aside.

2. That the impugned assessment order is in violation of the principles of natural justice as the Appellant was not accorded a reasonable opportunity of being heard during the course of assessment proceedings as the subject order was passed by the Ld. AO in haste merely to proceed towards closure of the scrutiny.

3. That the addition of 5% of receipts of the Appellant is fallacious and unjustified because

3.1 The said deemed profit ratio is arbitrary in nature.

3.2 The ratio so taken is without any cogent basis as no explanation has been advanced by the Ld. AO as to why 5% of total receipts of the Appellant should be made chargeable to tax.

3.3 The Hon'ble Cff(A)/ Ld. AO have grossly erred in bringing to tax the total receipts of income of the Appellant and not providing him with the requisite deduction of expenses incurred during by him the course of his business.

4. That on the facts and circumstances of the case and in law, the impugned orders of Hon'ble CIT(A) and Ld. AO are not sustainable in view of the following facts –

4.1. The Appellant had duly furnished such documentary evidences as were called for during the assessment proceedings.

4.2 The documentary evidences so produced have been completely ignored by the Hon'ble CIT(A)/Ld. AO while determining the assessed income.

4.3 The non-acceptance of the documentary evidences was never communicated to the Appellant by the Ld. AO.

4.4. The onus to prove the inadequacy of the documentary evidences lies on the revenue authority, which, in the instant case, has not been discharged.

4.5 The Ld. AO has not passed a speaking order that emanates the reasons for not taking the documentary evidences on record.

The Appellant craves leave to add, amend, alter or discard any of the above ground of appeal, before or the time of hearing.”

(B) In this case, assessment order dated 14.12.2017 was passed u/s 147/143(3) of the Income Tax Act, 1961 wherein the assessee's income was assessed at Rs.14,09,985/- as against returned income of Rs.8,75,087/-. An amount of Rs.5,34,898/- was added to the assessee's income by estimating the assessee's net profit from business of buffalo milk, at the rate of 5% of total receipts. The aforesaid addition of Rs.5,34,898/- was confirmed by the Ld. CIT(A) in his impugned appellate order dated 29.06.2018. The assessee filed appeal against this addition in appeal filed before the Ld. CIT(A). The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 29.06.2018 of the Ld. CIT(A). At the time of hearing before us, the assessee was not represented. In the absence of any representation from the assessee's side, we heard the Ld. Senior Departmental Representative ("Sr. DR" for short) for Revenue.

(C) On perusal of the aforesaid assessment order dated 14.12.2017 and the impugned aforesaid appellate order dated 29.06.2018, we find that the net profit ratio at the ad-hoc rate of 5% has been arbitrarily adopted by the Assessing Officer and the

Ld. CIT(A) without any justification. The Assessing Officer and the Ld. CIT(A) have not cited net profit ratio of comparable cases in the same line of business. Further, the Ld. CIT(A) and the Assessing Officer have not cited the net profit ratio of assessee's own business in earlier years. We find that the net profit ratio at the ad hoc rate of 5% adopted by the Ld. CIT(A) and the Assessing Officer, is arbitrarily and without any basis. The ad hoc ratio of 5% of the receipts adopted by the Ld. CIT(A) and the Assessing Officer is without any reasoning or supporting materials. The Ld. Sr. DR for Revenue supported the orders of Ld. CIT(A) and AO; but could not bring any material for our consideration to support the ad-hoc rate of 5% adopted by the Ld. CIT(A) and the Assessing Officer for estimating the assessee's net profit.

(D) We have perused the materials on record. We have heard the Ld. Sr. DR for Revenue in the absence of any representation from the assessee's side. We find that there is no material on record to justify the arbitrary estimation of assessee's income at the ad-hoc rate of 5% of receipts. Further, the Ld. Sr. DR also did not bring any material for our consideration to support the rate of 5% of receipts

for estimating the assessee's net profit. Further, the addition of the aforesaid amount of Rs.5,34,898/- is without any supporting materials and without any sound reasoning. In view of the foregoing, and in the specific facts and circumstances of this case, we are of the view that this addition is unsustainable. Accordingly, we direct the Assessing Officer to delete the aforesaid addition of Rs.5,34,898/-.

(E) In the result, the appeal of the assessee is allowed for statistical purposes.

Our order was already pronounced orally on 24.05.2022 in Open Court, in the presence of Sr. DR for Revenue, after conclusion of the hearing. This written order is now signed today on 25.05.2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated:
Pk

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI