

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member

I.T.A. No.137/Kol/2022
Assessment Year: 2011-12

Bishal Kumar Jaiswal.....Appellant
Village-Balarampur, P.O-Rangadih,
District-Purulia-723143.
[PAN: AJEPJ8028L]

vs.

ITO, Ward-3(3), Purulia.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 31, 2022

Date of pronouncing the order : May 31, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 11.02.2019 of the Commissioner of Income Tax (Appeals), Asansol [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. No one has put in appearance on behalf of the assessee despite notice. Therefore, I proceed to decide the appeal ex parte to the assessee after hearing the Id. DR. The assessee in this appeal has taken the following grounds of appeal:

"1. The Ld. Commissioner of Income Tax (Appeals) was wrong in confirming the order passed by the Income Tax Officer, rejecting the Audited Books of Accounts and assuming a Turnover / Gross Receipts of Rs.3,74,72,731/- and determining Net Profit Rs. 29,97,818/- (being 8% thereon) under the facts and circumstances of the case.

2) For that the Ld. Appellate Authority below has erred in Law under the facts and circumstances of the case holding that the A.O. has rightly rejected the Books of Accounts subjected to Audit u/s 44AB of Income Tax Act, 1961.

3) For that the Ld. Appellate Authority below as well as the Ld. Assessing Officer has acted beyond or without or in excess of the provisions of Law by invoking Section 44AD of the Income Tax Act, 1961 in as much as determining the Turnover at Rs. 3,74,72,731/- being the aggregate of all the amounts deposited in Bank (That includes Rs. 36,96,000/- Unsecured Loan deposits). Net Profit Rs.29,97,818/- being 8% of the Turnover thus the impugned Appellate order cannot be sustained at Law.

4) For that the impugned appellate order suffers from infirmities of omission of materials and grounds - No. 4 as to addition of Rs. 3,47,880/- being cash and Bank balance as detailed in the Audited Balance sheet missed due to inadvertence.

5 For that the Appellate Authority below has been hesitant in rendering complete and conscionable Justice and impugned order appealed against may kindly be modified/annulled or set aside.

The rest your appellant begs to urge at the time of hearing.

3. Apart from the grounds of appeal, the assessee has also furnished the facts of the case which for the sake of ready reference are also reproduced as under:

“1) The Assessee Appellant preferred the Appeal being Appeal Case No. 45/CIT(A)/ASL/TO/Wd-3(3)/Pur/15-16 agitating six additions made to the Returned income by Ld. Assessing Officer, I.T.O. Ward - 3(3) Purulia.

The Ld. Appellate Authority - the Commissioner of Income Tax (Appeals) has been pleased to dispose the appeal vide his order dated 11.02.2015.

2) (a) The Ld. C.I.T. (Appeals) has been pleased to allow the appeal by deleting several additions made by the Ld. Assessing Officer, but disallowed the appeal 3rd ground holding that the Assessing Officer has rightly rejected the Books of Account and 4 to 10th grounds of Appeal-pertaining to the Invocation of Section 44AD and thereby determining Net Profit of Rs 29,97,818/- being 8% of Rs. 3,74,72,731/- aggregate of the amounts credited in the all the Bank Accounts.

(b) The Ld. C.I.T. (Appeals) lost attention of the ground no. Addition as per Point 4 of Para 14 Rs.3,47,880.26 Cash and Bank Balance as detailed in the Audited Balance Sheet on record, while drawing this order appealed against missed to point it out specifically.

(c) The Assessee has disclosed - Taxable Income Rs. 2,81,073/-, Net Profit - Rs. 3,32,591/-, Sales/G.T.- Rs. 2,66,91,451/-, T.C.S. - Rs. 18,561/-on conformity with Audit Report dated 18.07.2011 on 28.01.2014.

3 On receipt of Notice dated 12.09.2013 u/s 148 of the Income Tax Act, 1961, the Assessee submitted the Return of Income on-line for Assessment Year 2011-2012 on 28.01.2014, but the Ld. I.T.O. mistaken the date as 28.04.2014.

On perusal of the Return submitted as above, the Ld. Assessing Authority issued Notice u/s 143(2) and 142(1) simultaneously.

4) In compliance thereto the Assessee produced the Books of Accounts, and other relevant records as desired by the Ld. I.T.O. in support thereof from time to time but the Ld. Assessing Officer has acted obliquely by resorting to Section 44AD of Income Tax Act, 1961.

Thus the Ld. Assessing Officer as well as the Ld. Appellate Authority has acted beyond the law by invoking section 44AD of Income Tax Act, 1961 under the facts and circumstances of the case.”

4. A perusal of the above facts narrated above, especially point no.4 would reveal that it is the plea of the assessee that audited books of account and other relevant records were duly produced before the Assessing Officer, however, the Assessing Officer without considering the said record proceeded to estimate the profits of the assessee u/s 44AB of the Act @8%. However, the Assessing Officer has noted in the impugned assessment order that no books of account were produced before him. We find that the similar plea was also taken by the assessee before the Id. CIT(A) that the audited books of account were duly produced before the Assessing Officer but the same have not been taken for consideration. Considering the above plea, I am of the view that in this case, the assessee is required to be given an opportunity to produce his books of account before the Assessing Officer, thereafter the Assessing Officer to decide the issue afresh after considering the books of account and other relevant documents as may be produced by the assessee. With the above observations, the appeal of the assessee is treated as allowed for statistical purposes.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 31st May, 2022.

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 31.05.2022.

RS

Copy of the order forwarded to:

1. Bishal Kumar Jaiswal
2. ITO, Ward-3(3), Purulia
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

