

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

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.1670/Del/2019
(ASSESSMENT YEAR 2014-15)**

N. M. Agro Pvt. Ltd. 1818 Naya Bazar Delhi-110 006 PAN-AABCN 1713D (Appellant)	Vs.	DCIT Central Circle-5 New Delhi (Respondent)
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Appellant By	Mr. C.S. Anand, Advocate
Respondent by	Mr. Rajesh Kumar, Commissioner of Income Tax (Departmental Representative)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-24, New Delhi ["Ld. CIT(A)", for short], dated 26.12.2018 for Assessment Year 2014-15.

Grounds taken in this appeal of Assessee are as under:

Grounds of Appeal

"1. That on the facts of the case and under the law, the Id. CIT(A) has erred in upholding the Id A.O.'s action of rejecting the books of account of the assessee u/s 145(3).

The Id CIT(A) has failed to appreciate that once the Id A.O. had not at all doubted the purchases, opening & dosing stock, expenses (direct & indirect) and even the G.P. Rate, there was no justification to reject the books of account u/s 145(3).

2. *That on the facts of the case and under the law, the Id. CIT(A) has erred in holding that the extra profit computed by the Id A.O. at Rs.30,43,345/- [by applying the declared G.P. Rate of 1.69% on assumed extra sales of Rs.18,00,79,573/- (being 10% of the total sales declared for the period 01.04.2013 to 31.03.2014)] was not erroneous .*

WITHOUT PREJUDICE

3. *That on the peculiar facts of the case, the addition made by the Id A.O. at Rs.30,43,345/- could had been restricted to Rs.11,03,177/-, which amount is worked out by applying the declared G.P. Rate of 1.69% on the assumed extra sales of Rs.65,27,67,733/- (being 10% of the total sales declared for the period 01.04.2013 to 31.09.2013)*

Note:

The assessee craves leave to amend/modify aforementioned grounds of appeal and/or to raise additional ground(s) of appeal, at any time prior to /during the course of appellate proceedings.”

(B) In this case, Assessment Order dated 31/03/2016 was passed by the Assessing Officer (“AO” for short) u/s 143(3) of the Income Tax Act, 1961 (“IT Act”, for short) determining total income at Rs.55,45,215/- (Rounded off Rs.55,45,220/-) as against the returned income of Rs.25,01,870/-. In the aforesaid assessment order an addition of Rs.30,43,345/- was made by the Assessing Officer on account of gross profit on unaccounted cash sales. The unaccounted cash sales were estimated by the AO at Rs.18,00,79,537/- which was 10% of declared sales of Rs.1,89,07,95,738/-. Further, gross profit on the aforesaid unaccounted cash sales of Rs.18,00,79,573/- was estimated by the

AO at aforesaid Rs.30,43,345/- which was 1.69% (gross profit ratio of the assessee on the declared sales) of aforesaid unaccounted cash sales of Rs.18,00,79,579/-. In this case, survey operation u/s 133A of IT Act was conducted on 30.09.2013. In the course of the survey, evidence of cash sales was found. The AO took adverse view of the evidence of cash sales. As discussed earlier, the AO estimated the quantum of unaccounted cash sales at 10% of the total sales, and applied gross profit rate of 1.79% on the estimated unaccounted cash sales, to estimate the aforesaid addition of Rs.30,43,345/- towards gross profit on unaccounted cash sales. The assessee filed appeal against the assessment order before the Ld. CIT(A). Vide impugned appellate order dated 26.12.2018, the Ld. CIT(A) confirmed the aforesaid addition of Rs.30,43,345/- and dismissed the assessee's appeal. The present appeal before us, has been filed by the assessee against the aforesaid impugned appellate order dated 26.12.2018 of Ld. CIT(A).

(C) At the time of hearing before us, the Learned Counsel ("Ld. Counsel", for short) for the assessee, and the Learned Commissioner of Income Tax, Departmental Representative ("Ld. CIT-DR" for short) for Revenue made initial submissions, after which the Ld. Counsel for the assessee agreed not to press grounds 1 and 2 of the appeal. However, in respect of ground 3 of appeal, the Ld. Counsel for the assessee drew our attention to the fact that the I.T. Officials had conducted survey action u/s 133A of IT Act in the case of the assessee company on 30.09.2013; and contended

that the sales made till 30.09.2013 only could have been taken into consideration for the purpose of estimating unaccounted cash sales and gross profit thereon. He further contended that there was no incriminating material for period after 30.09.2013; and that there was no justification for estimation of unaccounted cash sales and gross profit thereon, for the period after date of survey i.e., from 01.10.2013 to 31.03.2014; while pointing out that the total recorded and declared sales for the period from 01.04.2013 to 30.09.2013 was Rs.652767330/-; whereas the recorded sales for the period 01.10.2013 to 31.03.2014 was Rs.1148028407/-. He also submitted that such plea was also taken before Ld. CIT(A) and bifurcation of total sales amounting to Rs.1800795738/- (Rs.652767330/- plus Rs.1148028407/-) was provided to the learned CIT(A) by the assessee. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) did not favourably consider the assessee's plea that the exercise of estimation of unaccounted cash sales should be restricted to period up to date of survey and quantum of addition should be restricted to gross profit on estimated unaccounted cash sales upto date of survey only. He contended that the learned CIT(A) could not counter this submission of the assessee company, yet he had arbitrarily confirmed the entire addition of Rs. 3043345/-. He also submitted that it was not a case where assessment order was passed u/s 144 (Best Judgment Assessment); rather it was a case where assessment order was passed u/s 143(3). Therefore, he contended, the learned AO's action of enhancing the sales for the period

01.10.2013 to 31.03.2014 alleging unaccounted cash sales (without any evidence whatsoever), and also the learned CIT(A)'s action of confirming this enhancement of sales for the period 01.10.2013 to 31.03.2014, should not be approved by Income Tax Appellate Tribunal.

(C.1) To summarize, the Ld. Counsel for the assessee submitted that unaccounted cash sales should be estimated in respect of period from 01.04.2013 to 30.09.2013 only, as date of survey was 30.09.2013. He expressed no objection to unaccounted sales for the period from 01.04.2013 to 30.09.2013 being estimated at Rs.6,52,76,733/- (being 10% of recorded and disclosed sales of Rs.65,27,67,330/- during this period). He also did not express any objection to gross profit being estimated at Rs.11,03,177/- at the rate of 1.69% (being the declared gross profit rate) applied to estimated unaccounted sales of Rs.6,52,76,733/- for the period from 01.04.2013 to 30.09.2013.

(C.2) The Ld. CIT-DR for Revenue was in agreement with aforesaid submissions of the Ld. Counsel for the assessee in respect of ground -3 of the present appeal before us. He specifically agreed that estimation of unaccounted cash sales from 01.10.2013 onwards may be disregarded; and estimated gross profit thereon may be deleted. However, he strongly defended the addition of aforesaid amount of Rs.11,03,177/- being estimated gross profit @ 1.69% (being declared gross profit rate) on aforesaid estimated

unaccounted cash sales of Rs.6,52,76,733/- for the period from 1.04.2013 to date of survey (i.e. till 30.09.2013)

(C.2.1) We have heard both sides. We have perused the materials on record. At the time of hearing before us, there is no material dispute between representatives of the two sides on the relevant issues. Both sides are in agreement that unaccounted sales from 01.04.2013 to 30.09.2013 may be estimated at the rate of 10% of recorded sales during the period. Both sides are in agreement that declared gross profit rate of 1.69% may be applied on estimated unaccounted cash sales from 01.04.2013 to 30.09.2013 to compute the unaccounted income of the assessee and that the same may be confirmed. Consistent with this, both sides are in agreement that out of the aforesaid addition of Rs.30,43,343/-; the aforesaid amount of Rs.11,03,177/- may be confirmed, and the remaining amount of Rs.19,40,168/- may be deleted. In view of the foregoing, and as representatives of both sides were in agreement with this at the time of hearing before us, we direct the AO, in the specific facts and circumstances of the present case before us, to restrict the addition to Rs.11,03,177 and to delete the remaining amount of Rs.19,40,168/- out of the total addition of Rs.30,43,345/-. As discussed earlier, the Ld. Counsel for the assessee had also agreed not to press grounds 1 and 2 of this appeal. Grounds 1 and 2 of appeal have, in any case, become infructuous in view of our aforesaid direction to the AO; and are

treated for statistical purposes, as dismissed being infructuous and not pressed. Ground No.3 of appeal is treated for statistical purposes as allowed, in view of our aforesaid direction.

(D) In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

This order was already pronounced orally on 12th July, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 14/07/2022.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 14/07/2022

Pk

Copy forwarded to:

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

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI