

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.19/Hyd/2022		
Assessment Year: 2012-13		
Shri Rajeshwar Poienti Tandur PAN:AECPP6029C	Vs.	Income Tax Officer Ward-1, Vikarabad
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri B. Sunil Kumar, DR	
Date of hearing:	07/07/2022	
Date of pronouncement:	14/07/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 29.12.2021 of the CIT(A)/NFAC, relating to A.Y. 2012-13.

2. Facts of the case, in brief, are that the assessee is a trader in Pulses and filed his return of income declaring total income at Rs.5,23,537/-. The Assessing Officer on the basis of the information collected from the govt.(VAT Authorities) that there is variation in the turnover reopened the assessment u/s 147 of the Act by recording reasons and issued notice u/s 148.

3. During the course of assessment proceedings the Assessing Officer noted that the assessee has declared turnover of Rs.14,42,544/-, commission income of Rs.5,27,877/- and discount income of Rs.2,65,522/-. However, the turnover of the

assessee as per the VAT return is at Rs.5,52,86,821/-. He, therefore, asked the assessee to explain the same. It was submitted by the assessee that apart from his own turnover in trading, the assessee also does the work as commission agent for others on which commission income is being earned. However, the Assessing Officer did not accept the contentions of the assessee in the absence of any satisfactory explanation and treated the entire turnover as assessee's own turnover. The Assessing Officer estimated the income at 4.59% of the total turnover declared for the VAT authorities at Rs.5,52,86,821/- and determined the income at Rs.21,09,950/- as business income by observing as under:

“In view of all the above, the assessee's contentions in the letter mentioned above are considered as irrelevant for assessment. Hence, to maintain consistency, taking into a/c the sales as certified by the CTO on the basis of assessment for A.Y 2007-08 & 2008-09, the sales amount shown in the CTO's report i.e. 5,52,86,821/- are adopted and as in earlier year, gross profit is estimated @ 4.59% which was declared by the assessee in VAT returns and deducted the expenditure claimed therefrom Rs.4,27,715/- and the balance of Rs.21,09,950/- is treated as income from business.”

3.1 Considering the income from house property at Rs.1,12,630/-, the Assessing Officer computed the total income of the assessee at Rs.22,22,580/-.

4. In appeal, the CIT(A)/NFAC upheld the action of the Assessing Officer in computing the profit rate of 4.59% on the total turnover declared before VAT authorities.

5. Aggrieved with such order of the CIT (A)-NFAC the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The learned CIT(A), NFAC dismissing appeal is contrary to facts and law and is perverse.

2. The Ld. CIT(A) having appreciated that the CTO order is only up to 11.12, failed to appreciate that there is no specific information for this year and further that even for the earlier years such order of CTO itself is no more and therefore ought to have held proceedings under Sec.147 is invalid and illegal.

3. The CIT(A) erred in confirming the addition made by the Aa. The CIT(A) failed to appreciate that the Turnover is below limits and does not require 44AB audit and that Aa has no valid reasons to reject books and estimate income and therefore ought to have allowed the appeal.

(Tax effect - Rs.6,34,883)

For these and other grounds that may be urged, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal”.

6. The learned Counsel for the assessee strongly challenged the order of the CIT(A), NFAC in sustaining the profit estimated by the Assessing Officer at 4.59% of the total turnover. He submitted that the combined profit arrived at Rs.25,40,190/- is incorrect and application of the GP rate at 4.59% is also incorrect. He submitted that as per P&L A/c considering the GP rate of Rs.45,224/- on a turnover of Rs.14,42,544/-, the GP rate comes to 3.13%. The learned Counsel for the assessee submitted that if the contention of the Assessing Officer that the entire turnover as per VAT return of Rs.5,52,86,821/- is accepted, then also the GP rate of 3.13% on the above turnover should be applied which will give a gross profit of Rs.17,30,477/-. From the above, if the expenditure of Rs.4,27,715/- as claimed in the P&L A/c and further expenditure of market fee paid of Rs.5,20,378/- as per the proceedings of the Special Grade Secretary & Assessing Authority, Agricultural Market Committee, Tandur is considered, then the net profit would be Rs.7,82,384/-. He submitted that the assessee did not claim the market fee of Rs.5,20,378/- and the freight

expenditure was also not claimed on account of commission sales. He accordingly submitted that after considering the totality of the facts of the case, the net profit cannot exceed Rs.6.5 lakhs. He accordingly submitted that the high pitch assessment made by the Assessing Officer and upheld by the CIT(A) should be modified.

7. The learned DR, on the other hand, strongly supported the order of the learned CIT (A). He submitted that CIT(A)/NFAC after considering various submissions filed by the assessee and after considering the past records of the assessee has passed a speaking order on this issue and therefore, the same should be upheld and the grounds raised by the assessee on this issue should be dismissed.

8. I have heard the rival arguments made by both the sides, perused the orders of the AO and CIT(A)/NFAC and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me by both sides. I find in the return of income filed by the assessee, he has declared turnover of Rs. Rs.14,42,544/- as per PL& A/c and has shown commission income of Rs.5,27,877/- and discount income of Rs.2,65,522/-. However, as per the VAT return, the turnover of the assessee has shown at Rs.5,52,86,821/-. I find the Assessing Officer after considering various explanations given by the assessee from time to time treated the turnover declared before the VAT authorities at Rs.5,52,86,821/- as turnover of the assessee and applying GP rate of 4.59%, which was declared by the assessee on the VAT return, determined the GP at Rs.25,40,190/-. After deducting the expenditure in the P&L A/c of Rs.4,27,715/-, the Assessing

Officer determined the income from business at Rs. Rs.21,09,950. I find the CIT(A)/NFAC in his detailed order upheld the action of the Assessing Officer. It is the submission of the learned Counsel for the assessee that the assessee had declared a GP rate of 3.13% in its P&L A/c and therefore, the CIT(A)/NFAC should have applied the same rate of GP. It is his submission that after deducting various expenses claimed in the P&L A/c and the market fee paid at Rs.5,20,378/-, which was not claimed by the assessee, allowed as a deduction, then the net profit cannot exceed Rs.6.5 lakhs. I do not find much force in the above argument of the learned Counsel for the assessee. The GP rate of 4.59% has been adopted by the Assessing Officer on the basis of earlier years return and therefore, that does not call for any interference. However, a perusal of the records available before me shows that the assessee has paid an amount of Rs.5,20,378/- as market fee but the same has not been claimed in the profit as loss account. Similarly, the submission of the learned Counsel for the assessee that it has not claimed any freight charges on account of commission sale in the P&L A/c which has been treated as own sales by the Assessing Officer and no such expenditure has been debited in the P&L A/c and therefore, deduction of the same should be allowed also finds some force. Therefore, considering the totality of the facts of the case and in the interest of justice, I am of the considered opinion that deduction of the amount of Rs.5,20,378/- paid by the assessee as market fee which is verifiable from the VAT assessment order and an amount of Rs.50,000/- on account of probable freight charges on the commission turnover which has been treated by the Assessing Officer as assessee's own turnover from the business income determined by the Assessing Officer and upheld by the CIT(A)/NFAC will meet the ends of justice. I, therefore, modify the

order of the CIT(A)/NFAC and direct the Assessing Officer to allow further deduction of Rs.5,70,378/- (i.e.,Rs.5,20,378/- towards market fee + Rs.50,00 towards probable freight charges) from the business income determined at Rs.21,09,950/-. The grounds raised by the assessee are accordingly partly allowed.

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

Order pronounced in the Open Court on 14th July, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 14th July, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Rajeshwar Poienti C/o Shri A.V.Raghuram Flat No.610 Babukhan Estate, Basheerbagh, Hyderabad 500001
2	Income Tax Officer Ward-1 Vikarabad
3	CIT (A)- NFAC Delhi
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order