



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.618/LKW/2019
Assessment Year: 2014-15

The Income Tax Officer-6(2) Lucknow	v.	Shri Mohd. Sameer Qureshi 264/149, Victoria Ganj Bilochpura Lucknow
		TAN/PAN:AABPQ1254B
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Smt. Sheela Chopra, CIT (DR)		
Date of hearing:	22	07	2022
Date of pronouncement:	22	08	2022

ORDER

PER A.D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A) – 2, Lucknow dated 22.8.2019, for Assessment Year 2014-15, taking the following Grounds:

1. That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the addition of Rs.6,67,79,794/- ignoring the fact that the settled principle that res judicata does not apply in Income Tax Proceedings.
2. That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the addition made by the Assessing Officer after rejecting books of accounts without giving any reasonable cause or without pointing out any discrepancy in the finding of the Assessing Officer's order.

3. That the Id. CIT(A)-2, Lucknow has erred in law and facts by not providing opportunity to Assessing Officer to put his view.

2. The brief facts of the case are that the assessee filed his return of income on 25.11.2014 declaring an income of Rs.7,82,400/-. The case was selected for scrutiny through CASS and the Assessing Officer finally completed the assessment under section 143(3) of the I.T. Act, assessing the total income of the assessee at Rs.6,75,164/-, vide his order dated 30.11.2016. Aggrieved, the assessee preferred an appeal before the Id. CIT(A). Out of the total income assessed by the Assessing Officer at Rs.6,75,62,164/-, the Id. CIT(A) has deleted the addition of Rs.6,67,79,794/-. Aggrieved, the Department is in appeal.

3. The Id. D.R. has contended that the Id. CIT(A) had erred in law and on facts in deleting the addition of Rs.6,67,79,794/-, ignoring the fact that the settled principle is that the res judicata does not apply to Income Tax Proceedings; that the Id. CIT(A) had also erred in law and on facts in deleting the addition made by the Assessing Officer after rejecting the books of account, without giving any reasonable cause or without pointing out any discrepancy in the finding of the Assessing Officer; that the Id. CIT(A) had erred in law and on facts in deciding the matter without providing reasonable opportunity to the Assessing Officer to put forth his view; and that therefore, the order of the Id. CIT(A) be set aside and that of the Assessing Officer be restored.

4. Per contra, the Id. Counsel for the assessee, placing heavy reliance on the impugned order, has contended that the Assessing Officer had estimated the turnover at Rs.84,45,27,045/-, as against the turnover declared in the Auditor's Report at Rs.76,00,70,866/- and thereby applied a net

profit rate of 8%; that the reason for estimating the turnover and rejecting the books of account by the Assessing Officer was that the total credits in the bank accounts of the assessee was Rs.84,45,27,044/-, against which, the assessee had shown a turnover of Rs.76,00,70,866/-; that the difference between the two figures is of Rs.8,45,22,442/-; that the Assessing Officer was of the view that the entire credits appearing in the bank account were part of the total turnover and since the assessee has not shown the correct turnover, the books of account as maintained by the assessee were to be rejected; that the Id. CIT(A) accepted the assessee's submission alongwith the reconciliation of sales/turnover as made by the assessee and incorporated the same at page four of the Appellate Order; that as explained by the assessee before the Id. CIT(A), a sum of Rs.6,90,93,000/- is the amount transferred from the Corporation Bank to the SBI account of the assessee; that the balance amount of Rs.1,54,29,442/- represented the amounts received from the debtors, advances received from the customers and out of the previous withdrawals; that according to the Id. CIT(A), the difference in the bank deposits to the extent of Rs.1,54,29,442/- could not be properly explained by the assessee, therefore, the Id. CIT(A) estimated the turnover at Rs.77,54,34,044/- (Rs.76,00,04,602/- plus Rs.1,54,29,442/-); that the Id. CIT(A), looking to the past history of the assessee, correctly applied the net profit rate of 0.172%, as applied by the Assessing Officer, and accepted by the assessee, in the Assessment Year 2013-14.

5. Heard. It is seen that the assessee, who was in the business of purchase and sale of Buffalos, made sales of Rs.76,00,04,602/- to three parties. He duly reconciled the total credits in his three bank accounts with the turnover in his books, as taken note of by the Id. CIT(A) at page 5 of the

impugned order. This has not been rebutted before us. The Assessing Officer added all the credits appearing in the three bank accounts of the assessee and arrived at a turnover of Rs.84,45,27,044/-. He applied a net profit rate of 8%. The ld. CIT(A) observed that the deposits of Rs.6,90,93,000/- in SBI constituted transfer of funds from the assessee's account with Corporation Bank and thus stood already included in the credits of the Corporation Bank, due to which, they could not be added twice to the assessee's turnover. This also remains unchallenged before us. The ld. CIT(A) found that the credit entries of Rs.1,54,29,442/- remained unexplained and that thus, this amount was to be included in the assessee's turnover. The assessee has not controverted this finding of the ld. CIT(A). The ld. CIT(A) estimated the assessee's turnover at Rs.77,54,34,044/-.

6. Apropos the Assessing Officer's estimation of net profit rate at 8%, this estimation was based on the Inspector's Report, as per which, net profit rate in this line of business is 20% or more. However, the Assessing Officer illegally unilaterally relied on such Report of the Inspector, without affording any opportunity to the assessee to rebut the same. The Assessing Officer thus clearly flouted the basic natural justice principle of *audi alteram partem*.

7. Further, the Assessing Officer, in applying the net profit rate of 8%, arbitrarily and illegally ignored the history of net profit rates of the assessee himself. Undisputedly, in the immediately preceding assessment year 2013 – 14, the assessee's case stands assessed in scrutiny assessment under section 143(3) of the I.T. Act, at a net profit rate of 0.172%, which has been accepted by the assessee. The Assessing Officer's order was thus a result of complete non-reading of material documentary

evidence in the shape of comparable case of the assessee's own assessment order for assessment year 2013-14, non-applicability of res judicata to the income tax proceedings notwithstanding. It goes without saying that where the books of account have been rejected, the history of the case, of both earlier as well as succeeding assessment years, becomes the most relevant criterion for estimation of income. The transactions for assessment year 2013 - 14 having not been found to be a sham or malafide, the ld. CIT(A) has correctly applied that year's net profit rate of 0.172% to the year under consideration.

8. The ld. CIT(A) has duly taken into consideration the afore-discussed shortcomings in the assessment order. It cannot, as such, be said that the ld. CIT(A) did not give any reasonable cause for deleting the addition, or that he did not point out any discrepancy in the view expressed by the Assessing Officer in his order.

9. For the above reasons, finding no merit in the Grounds raised by the Department, they are rejected. The well-versed findings recorded by the ld. CIT(A) do not suffer from any infirmity whatsoever. They are upheld.

10. In the result, the appeal is dismissed

Order pronounced in the open Court on 22/08/2022.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:22/08/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar