

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 136/Asr/2017
Assessment Year: 2007-08

M/s K.C. Autos,
Banga Road, Nawanshahr

Vs. Income Tax Officer,
Nawanshahr

[PAN: AAHFK 5844P]

(Appellant)

(Respondent)

Appellant by : None
Respondent by: Sh. Ghansham Sharma, Sr. DR

Date of Hearing: 13.09.2022
Date of Pronouncement: 16.09.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order dated 13.01.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar, arising out of assessment order passed u/s 143(3) r.w.s. 147 of the Act in respect of the Assessment Year 2007-08, wherein the assessee has challenged the confirmation of addition of Rs.40,676/- on account of

enhanced sales on the basis of bank credit and Rs.4,20,000/- being deposits in Punjab National Bank, Phagwara without appreciating the facts of the case.

2. None appeared for the assessee. We have rejected the adjournment application, filed by the appellant as it has no merits. The reason for seeking adjournment was mentioned that the appeal defect as regard to the challan deposit under the wrong head has been removed and copy was awaited from the Income Tax Officer. After hearing, the Id. DR and considering the minor issue of addition on account of profit on estimated sales based on deposit in the Central Bank of India, as addition of Rs.40,676/- and unexplained deposit of Rs.4,20,000/- in the loan a/c of PNB, Phagwara, it is decided to hear the appeal on merits based on the material available on the record.

3. During the course of scrutiny, the AO has treated the total credit of Rs.27,71,159/- in the bank account of the appellant assessee maintained with the Central Bank of India as total sales and adopted net profit @ 5.1% of these sales. Thus, the AO has computed Rs.1,41,330/- as net profit of the assessee, and by giving credit for the income declared from such net profit, he added Rs. 40,676/- (1,41,330 – 1,00,654), to the return income of

the assessee as undisclosed profit on the sales of scooter and their spare parts which has been confirmed by the Id. CIT(A) by holding that the AO has adopted fairly reasonable net profit rate inasmuch as, the AO has considered deposits in the bank account in the sales and restricted himself to only the net profit on the sales although the assessee has not been able to substantiate the deposits in the bank account.

4. Having heard the Id. DR, perusal of the record and the impugned order. We find that the AO and the Id. CIT(A), has not given any concrete basis or criteria such as past history of the assessee or comparable case of assessee who has been engaged in the similar business activity on parity of facts for the application of the net profit rate at 5.1% so as to disprove the profit rate declared by the assessee while showing net income on the sales turnover. In our view, such adoption of the profit rate, in arbitrary manner based on assumption and presumption without corroborative evidence cannot be approved. Accordingly, the addition of Rs.40,676/- is hereby deleted.

5. The next issue, pertains to the cash deposit of Rs.4,20,000/- in the loan account of the appellant with the PNB, Phagwara. The AO being not satisfied with the explanation of the assessee added back, this amount to

the assessee's income as unexplained cash credit. The Id. CIT(A) has confirmed the addition by holding that the assessee has filed return of income of Rs.51,680/- and therefore, it was not possible that the repayment of loan of Rs. 4,20,000/- is made out of his income earned as per the return of income.

6. After hearing, the Id. DR and perusal of record, we find that the assessee has been in the business of sales of scooters and their spare parts by the name of M/s K.C. Autos, Banga Road, Nawanshahr. Admittedly, a sum of Rs. 27,71,159/- was credited to the bank account of the assessee in Central Bank of India, as being explained made out of sales during the course of scrutiny before of the AO. Admittedly, the assessee has made cash deposit and withdrawn from the same bank account. The observation of the Id. CIT(A) that the assessee has filed a return of income of Rs.41,680/- is not enough to make the cash payment of the loan of Rs.4,20,000/- is without basis. The AO and the Id. CIT(A) failed to establish that cash repayment of the loan of Rs.4,20,000/- was made by the appellant, out of the undisclosed income and merely stating that it is not possible to make the repayment of the loan without bringing on record corroborative documentary evidence, such observation and findings are held to be perverse to the facts on record. Therefore, the finding of the Id.

CIT(A) based on assumptions and presumptions are held as imaginary in the absence of material evidence. Therefore, the addition of Rs.4,20,000/- confirmed by the CIT(A), without appreciating the facts of the case cannot be justified. Considering the facts of the case, nature of the business, the cash sales opening cash balance and in particular the amount of cash repayment of loan of Rs.4,20,000/- stands deemed explained.

7. Accordingly, we accept the grievance of the assessee is accepted as genuine and therefore, the addition of Rs.4,20,000/- is hereby deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.09.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order