

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &  
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 3753/MUM/2016 (A.Y.2008-09)

M/s Cannon Industries Pvt Ltd 109, Churchgate Chambers 5, New Marine Lines, Mumbai-400 020 <b>PAN : AAACC2189D</b>	vs	Dy.Commissioner of Income-tax- 1(1), Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	None
Department represented by	Shri Hoshang B Irani – (DR)

Date of hearing	01/06/2022
Date of pronouncement	29/08/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

This appeal has been filed by the assessee as against the order of the Ld.Commissioner of Income-tax (Appeals)-28, Mumbai dated 28/04,2016 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2008-09.

2. The solitary ground of appeal is the addition of Rs.1,48,49,998/- on account of other business income made by the Assessing Officer and confirmed by the Ld.CIT(A).

3. It is to note that the assessee has not appeared before us inspite of several opportunities. Therefore, we proceeded to decide the appeal by hearing the Ld.DR and by perusing the materials available on record.

4. The brief facts are that the assessee is engaged in the business of manufacturing and trading cloth materials. The assessee filed its return of income on 30/09/2008 declaring total income at Rs.1,54,37,360/- for the impugned assessment year. The assessee's case was selected for scrutiny and assessment order under section 143(3) was passed on 29/12/2010 determining total income at Rs.19,35,16,560/- and confirmed by the Ld.CIT(A). The assessee then preferred appeal before the Tribunal and the C-Bench of the Tribunal passed order in ITA No.5512/Mum/2012 dated 17/10/2014 remitting the matter to the Ld.CIT(A) for deciding the same afresh by considering all relevant facts and circumstances as discussed by the co-ordinate bench dated 17/10/2014. Before the Ld.CIT(A) it was submitted that the Assessing Officer estimated the net profit of Rs.17,86,66,559/- out of the total turnover of Rs.2,19,73,35,399/- after deducting the expenditure of Rs.4,09,66,981/- in the impugned assessment order dated 29/12/2012. In appeal before the co-ordinate bench, the same was remitted back to the Ld.CIT(A). The operative portion of the decision of the Tribunal is as under:-

*"16.4 Having considered the rival submissions as well as relevant material on record. We note that even if the Assessing Officer was not satisfied with the book results of the assessee, the adoption of GP at 10% as against the GP of the assessee for the earlier years at 2.3% is not justified. We find that the Assessing Officer has not brought out any comparable or prevailing GP in the trade for adopting the TP at 10%. Further, the Assessing Officer has completely overlooked the relevant fact of GP for all other A.Yr of the assessee, Accordingly, the issue is required to be considered by the CIT(A) on merits by considering all these aspects, though the assessee did not appear before the CIT(A), however, the impugned order of CIT(A) is very cryptic and without examination of any fact or relevant aspect of the matter. In the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of CIT(A) and remit the matter to the record of CIT(A) for deciding the same afresh by considering all the relevant facts and circumstances as discussed above. The assessee is directed to co-operate in the proceedings before the CIT(A)."*

4.1 The Ld.CIT(A) made a comparison of the assessee's gross profit and net profit of the assessee based on the turnover of the assessee for six years and considered the highest net profit rate @0.70% for assessment year 2008-09 wherein the assessee has offered for tax Rs.1,54,37,363/-. The Ld.CIT(A) further examined the defects pointed out by the Assessing Officer pertaining to the outstanding balance available with the assessee company to Kapoor Automotives, Khurana & Company, Moon Enterprises, Nahar Impex and Sanam Impex as per the assessment order and also that assessee has not proved the genuineness of major sales and purchases and has also not substantiated the withdrawal of huge cash in spite of the fact that there was no cash requirement in the company. Upon perusal of the assessment order and the assessee's submission the Ld.CIT(A) has fixed the net profit @ 0.85% and estimated profit at Rs.1,86,77,350/- i.e. (0.85% of total turnover of Rs.2,19,73,35,399/-) to the income declared in the return of income dated 30/09/2008 was Rs.1,54,37,360/- and the Ld.CIT(A) proceeded to compute the total income as below:-

Estimated Profit as determined	Rs.1,86,77,350/-
Other income as disclosed	Rs.1,48,49,998/-
Total Income	Rs.3,35,27,348/-
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5. The assessee was aggrieved on addition of Rs.1,48,49,998/-, which according to the assessee, was on account of wrong interpretation of other business income wherein the Assessing Officer has treated the entire 'other business income' as "Income from other sources".

6. Having heard the Ld.departmental representative and perused the materials on record, we are of the considered view that as the assessee has not been present before us nor has he filed any documentary evidence to support his claim, we deem it fit to remit it back to the Ld.CIT(A) for the purpose of giving one last opportunity to the assessee. The Ld.CIT(A) is hereby directed to verify whether the impugned addition of Rs.1,48,49,998/- is "Income from other sources" or "Other business income". The assessee has to strictly adhere to the notices issued by the Ld.CIT(A) and the Ld.CIT(A) shall decide the same on merits upon compliance from the assessee.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 29<sup>th</sup> August, 2022.

Sd/-

sd/-

<b>(PRASHANT MAHARSHI)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 29/08/2022

Pavanan

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**