

आयकर अपीलीय अधिकरण, 'GAUHATI पीठ , कोलकाता

आभासी माध्यम से

IN THE INCOME TAX APPELLATE TRIBUNAL

GAUHATI BENCH

VIRTUAL HEARING AT KOLKATA

समक्ष : श्री राजपाल यादव, उपाध्यक्ष, कोलकाता क्षेत्र (एवं)  
श्री मनीष बोरड, लेखा सदस्य

Before: SHRI RAJPAL YADAV, VICE PRESIDENT (KZ) and  
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं.य/

ITA No. 222/GAU/2018

निर्धारण वर्ष/

Assessment Year:2015-16

<b>Shri Sudeb Roy</b> Bijay Kumar, Chowmuhani Opp: Charulata Butik Gali, Krishna Nagar, Agartala- 799001.	<b>बनाम</b> / <b>V/s.</b>	<b>The ITO, Ward-3,</b> Agartala
<b>PAN: ADOPR0425M</b>		
अपीलार्थी /Appellant	प्रत्यर्थी /Respondent	
अपीलार्थी की ओर से/By Appellant	None	
प्रत्यर्थी की ओर से/By Respondent	Shri N.T Sherpa, JCIT, Ld.SR- DR	
सुनवाई की तारीख/Date of Hearing	07-09-2022	
घोषणा की तारीख/ Date of Pronouncement	12-12-2022	

**आदेश / O R D E R**

**PER MANISH BORAD, AM.**

The present appeal has been preferred by the assessee against the order dated 27-06-2018 of the Ld. Commissioner of Income-tax (Appeals), [hereinafter referred to as 'CIT(A)'], Shillong [hereinafter referred to as 'CIT(A)'] for the assessment year 2015-16.

2. The assessee has raised the following grounds:-

1. For that the impugned order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law, facts and procedure.
2. For that the Id. CIT(A) was not justified in upholding the action of the Id. AO in arbitrarily determining Rs. 12,64,14,049/- as undisclosed business turnover of the assessee.
3. For that on the facts and circumstances of the case, the Id. CIT(A) ought to have held that the Id. AO was not justified in again adding Rs. 2,59,367/- to the undisclosed business turnover of the appellant and the same amounts to double addition.
4. For that the Id. CIT(A) ought to have held that the Id. AO was not justified in relying upon the decision of the Id. CIT(A)'s order dt. 20.09.2017 without confronting the same to the assessee and without allowing any opportunity of being heard in respect of the same, which vitiated the entire assessment.
5. For that the Id. CIT(A) ought to have held that the Id. AO was not justified in arbitrarily and whimsically assuming net profit of the appellant from alleged undisclosed turnover at 8% without any basis and that too without allowing any opportunity of hearing in respect of the same.
6. For that the Id. CIT(A) ought to have held that the order of assessment passed by the Id. AO was in gross violation of principles of natural justice and consequently, bad in law and unsustainable.
7. For that the Id. CIT(A) was not justified in not holding that arbitrary addition of Rs.32,226/- made by the Id. AO on account of interest income is bad in law and on facts.
8. For that the Id. CIT(A) was not justified in not holding that addition of Rs. 49,999/- on account of alleged unexplained investment, without allowing any opportunity to the assessee to explain its sources, is bad in law and untenable.
9. For that the Id. CIT(A) ought to have held that the Id. AO ought to have allowed credit for all the amounts which have been deducted as ITDS from the assessee.
10. For that the impugned order was passed by the learned CIT(A) in gross violation of the principles of natural justice and without allowing reasonable opportunity of being heard and hence, the same is bad in law and is liable to be quashed.
11. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing .

3. When the case was called, none appeared on behalf of the assessee. Perusal of note sheet shows that in the past when the case was fixed for hearing none appeared also on two occasions. We, therefore, deem it proper to adjudicate the appeal on merits *ex parte qua the assessee* with the assistance of the Id. Departmental Representative and material available on record.

4. Brief facts of the case as culled out from records are that the assessee is an individual, engaged in the business of retail trading. Income at Rs. 4,99,860/- declared in e return filed on 30-09-2015 for the assessment year 2015-16. Case selected for scrutiny through CASS followed by serving of notices issued u/s. 143(2) and 142(1) of the Act. The Id. AO based on an information came to know that the assessee had various bank accounts not disclosed in the regular return of income. Examining the undisclosed bank accounts the Id. AO noticed that there are huge deposits amounting to Rs. 12.64 cros, which the assessee has failed to explain. The Id. AO after considering the other details concluded the assessment making the addition applying the net profit rate at 8% on the undisclosed turnover, thereby making addition at Rs.1,01,33,873/- and also made addition for unexplained investment of Rs.49,999/- and addition on undisclosed interest income of Rs. 32,226/- and assessed income at Rs. 1,07,15,950/-.

5. Aggrieved, the assessee preferred appeal before the Id. CIT(A) and stated that the assessee is in the business of importing of fish from Bangladesh and earned commission @ 1%, which he failed to disclose in the return. Copy of consignment agreement was filed, which entered into on 01-08-2014. However, the assessee failed to get any confirmation from M/s. Babul Enterprises nor could file any other details/evidence in support of the claim being a commission agent and the same resulted in dismissal of appeal by the Id. CIT(A).

6. Aggrieved, the assessee is now in appeal before this Tribunal.
7. The Ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.
8. We have heard the Id. DR and perused the material placed on record before us..
9. As regard to ground nos. 1 to 6 the grievance of the assessee is against the determination of undisclosed business turnover, arbitrary application of net profit rate at 8% and not allowing proper opportunity of bearing heard.
10. As far as not allowing proper opportunity is concerned, we fail to find any merit in this submission of assessee as S/Shri Deb Roy & Sudeb Roy appeared and filed written submissions/explanation, which has been duly considered by the Id. CIT(A). Therefore, there is no merit in ground no. 6 raised by the assessee.
11. As regard to remaining grounds 1 to 5 are concerned, the calculation of undisclosed business turnover and application of net profit rate at 8%, we find that the assessee failed to disclose the same in his bank account. It is not in dispute that the alleged undisclosed business turnover of Rs. 12,64,14,049/- is total credits in undisclosed bank account. Due to lack of necessary details the Id. AO confined the addition to 8% of undisclosed business turnover. The Id.AO made the addition for estimating net profit at Rs.1,01,33,873 (i.e Rs.12,66,73,416 x 8%) on the total undisclosed turnover of Rs. 12,66,73,416/-.
12. As far as the correct figure of undisclosed turnover is concerned, we find that the sum of Rs. 2,59,367/- is part of disclosed bank accounts, which has been already considered by the assessee while computing the income shown in the I T Return. So the undisclosed turnover remains at Rs. 12,64,14,049/-.

13. We find that both the lower authorities have applied net profit @ 8% on presumptive basis. However, considering the facts that the assessee has stated to be a commission agent for selling fish imported from M/s. Babul Enterprises of Bangladesh and copy of consignment agreement has also been filed before the Id. CIT(A). The assessee was to get commission at 1% of the sale value. Application of net profit rate at 8% on the total undisclosed business turnover would be excessive and higher, which will hit the assessee. We, therefore, in order to bring an end the controversy and also in the interest of justice and being fair to both the parties and also considering the fact that there was undisclosed sales prior to 1.8.2014, the assessee himself has offered the N.P rate at 2.03% on the disclosed turnover also, estimating the net profit @ 4% will meet the end of justice. Thus, the estimated net profit on undisclosed business turnover, will works out at Rs.50,56,562/- and the same stands confirmed and remaining addition stands deleted. Thus, ground nos. 2 to 5 are partly allowed.

14. Apropos ground no. 7 relating to addition for undisclosed interest of Rs. 32,226/-, we are of the considered view that since we have already estimated the business income of assessee for the year under consideration, we do not find any merit in the action of the Id. AO making the said addition. The same stands deleted. Ground no. 7 is allowed.

15. Apropos ground no. 8 regarding the addition for unexplained investment of Rs.49,999/- we find that in the undisclosed bank account held with Axis Bank the initial funding towards investment of Rs.49,999/- was made. Considering the returned income and additions confirmed by us ground nos. 1 to 5. We are of the view that assessee has sufficient creditworthiness to explain the source of Rs.49,999/- and therefore, no addition is called for. Thus, finding of the Id. CIT(A) is reversed and ground no.8 is allowed.

16. Ground no. 9 relates to grievance of assessee that the Id. AO ought to have allowed the credit of tax, which has been deducted at source from the assessee. We find merit in this ground of assessee and thus, restore this issue to the Id. AO, who shall examine the veracity of claim of assessee and if credit is not given for the tax deducted at source, the same should be allowed. Thus, ground no. 9 of assessee's appeal is allowed for statistical purpose.

17. Through ground no. 10 the assessee again stated that there has been gross violation of principle of natural justice, however, we find that similar issue was raised in ground no. 6, which we have already adjudicated and dismissed. Therefore, ground no. 10 is also dismissed.

18. Last ground is general in nature, which requires no adjudication.

19. Apart from the above, it is observed that as per Rule 34 of ITAT Rules, 1963 an order is required to be pronounced preferably within 90 days from the date of hearing. We are conscious of this fact, but it is pertinent to observe that after the hearing one of us ( i.e. Hon'ble Vice President (KZ)) remained on tour to ITAT Mumbai Benches as well as Hyderabad Benches, thereafter, on medical leave. Therefore, he was out of Kolkata for more than 1 month. Therefore, due to these reasons the order could not be pronounced within 90 days. Thus, order is pronounced today.

20. In the result, the appeal of assessee is partly allowed for statistical purpose.

आदेश खुले न्यायपीठ में दिनांक 12-12-2022 को उद्घोषित।

Order pronounced in open court on 12-12-2022

Sd/-

( राजपाल यादव, उपाध्यक्ष

(RAJPAL YADAV)

VICE PRESIDENT (KZ) **Date -12-2022**

Sd/-

( मनीष बोरड, लेखा सदस्य)

(MANISH BORAD)

ACCOUNTANT MEMBER

Kolkata/ कोलकाता

\*\*PP/Sr.PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant- **Shri Sudeb Roy**, Bijay Kumar, Chowmuhani  
Opp: Charulata Butik Gali, Krishna Nagar, Agartala-799001.
2. प्रत्यर्थी/Respondent-**The ITO, Ward-3**, Agartala
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण, कोलकाता ।