

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"B" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1914/Mum./2008**

**(Assessment Year : 2004-05)**

Marshal Multitrade Pvt. Ltd.  
Shri Naman Plaza, Office no.33  
S.V. Road, Behind Shopper Stop  
Kandivali (W), Mumbai 400 067  
PAN – AADCM0756F

..... Appellant

v/s

Income Tax Officer  
Ward-9(2)(3), Mumbai

.....Respondent

Assessee by : Shri Rajiv Khandelwal

Revenue by : Shri Chetan M. Kacha

Date of Hearing – 28/11/2022

Date of Order – 13/12/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 14/01/2008 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-IX, Mumbai [*'learned CIT(A)'*], for the assessment year 2004-05.

2. The present appeal has been listed for hearing before us pursuant to the order dated 16/02/2018, passed by the Co-ordinate Bench of the Tribunal in Marshall Multitrade Pvt. Ltd. vs ITO, M.A. no. 16/Mum./2017 (in ITA no. 1914/Mum./2008, for the assessment year 2004-05), whereby, the earlier

order dated 04/05/2016, passed under section 254(1) of the Act was recalled and appeal was directed to be re-fixed for hearing.

3. In this appeal, the assessee has raised the following grounds:

*"1] The learned CIT(A) has erred in confirming the order passed by AO as 144 r.w.s.145(3). Reasons assigned by her for doing the same are wrong and insufficient.*

*2] On the facts and the circumstances of the case especially when inaccuracies having being pointed out in the body of the AO and in view of the massive evidence in the form of extracts of the books of accounts furnished by the appellant along with the supporting documents as admitted by the AO and in view of method of accounting consistently followed by the assessee, it is wrong on the part of the learned CIT(A) to confirm the action of the AO being an assessments u/s 144 r.w.s. 145(3).*

*3] She has further erred in estimating the income at 1 per cent of the total turnover, especially when there is no finding regarding incorrectness or completeness of the accounts and the method of accounting having been followed consistently by the assessee and thus the estimation has been made on the basis of pure guesswork.*

*4] No comparable case having being cited and there is no discussion of the past history of the assessee and thus it is wrong on the part of the authorities below to hold that the accounts are unreliable.*

*5] Complete explanation having being given with regard to cash withdrawals and cash deposit it is wrong on the part of CIT(A) to have based her estimate on that count.*

*6] Order passed is bad in law and contrary to the provisions of the Act.*

*7] The appellant craves leave to add, alter and/or modify the grounds of appeal."*

4. The only grievance of the assessee is against estimating its income at 1% of total turnover.

5. The brief facts of the case as emanating from the record are: For the year under consideration the assessee filed its return of income on 30/10/2004, declaring a total income of Rs.67,946. During the course of

assessment proceedings, the assessee was asked to furnish quantity and value-wise detail of opening stock/and closing stock. The assessee was also asked to furnish item-wise, month-wise, party wise bifurcations of the transaction along with bill No. for the quantity of sales and purchases made during the year and also proof of payment of excise duty made during the year, since in the Form 3CD the auditor has mentioned that the assessee is doing trading activity only, though the profit and loss account is showing the adjustment of the excise duty from the sale receipts. The assessee was also asked to produce books of accounts along with supporting bills and vouchers. In reply, the assessee submitted cash book, bank book, Ledger account of sale and purchase, and other partial details. Apart from this, no other registers such as stock register, RG register, salary register etc., bills, vouchers supporting documents/evidence were furnished. Even despite multiple opportunities, as noted in the assessment order, the complete details as sought were not furnished. Considering the inaccuracies and or incompleteness of the books and the fact that the assessee has failed to produce the books of accounts with supporting evidence, records, invoices, bills/vouchers, stock register, excise record/registers, the books of accounts of the assessee company were rejected under section 145(3) of the Act. The Assessing Officer ('AO') vide order dated 29/12/2006, passed under section 144 of the Act, inter-alia, disallowed the claim of excise duty in view of the provisions of section 145A of the Act. Further, the AO in absence of details of income and expenditure with supporting documentary evidence assessed the

income of the assessee at 2% of the sales turnover, labour charges, and other receipts shown in the income side of the profit and loss account.

6. Before the learned CIT(A), the assessee submitted that it is engaged in the import of crude edible oil. The crude eligible oil so important is being refined at refineries and the same is sold in the local market. Goods are cleared at various ports through clearing and forwarding agents and the assessee has to bear all the expenses like custom duty, clearing and forwarding charges, port expenses, survey charges, cargo handling charges etc. Since the assessee does not have any infrastructure facility at the port of its own like storage tanks etc., it has to hire tanks from others for which it has to pay storage charges and that processing charges are paid to the refining units who process the crude oil and convert the same into consumable refined oil. The assessee also submitted that the observation of the AO that the assessee has not complied with the notice issued under section 142(1) of the Act is factually incorrect and all the details as sought were submitted by the assessee. The learned CIT(A) vide impugned order upheld the action of the AO in rejecting the books of account of the assessee in absence of stock record, huge withdrawal of cash by the assessee in March, non-inclusion of excise duty in closing stock as per the mandatory requirement of section 145A and absence of stock records. However, the learned CIT(A) granted partial relief to the assessee and reduced the estimated income of the assessee from 2% to 1% of the turnover. The relevant findings of the learned CIT(A) are as under:

"14. I have gone through the contention of the appellant as well as that of the AO. I have perused various details filed by the appellant. It is not in dispute that the appellant company was asked to produce stock register to verify the quantitative details of sales and purchased made Citing the year under consideration. However the same was not produced before the AO. Further this regard the appellant has submitted that the said stock records were maintained at the processor's end ie Ruch Soya's place which was in any case not produced before the AO. Thus what clearly emerge is that the appellant has not maintained any stock records, Now coming to the cash withdrawal is concerned it is seen that during the month of march the appellant company has made total withdrawals of Rs. 18 lacs, which is far in excess of cash withdrawals made in earlier months meaning thereby that the appellant company has shown payments in cash which are inordinately in excess of its regular business needs, which has not been properly explained. The appellant is a company maintaining its accounts on mercantile system of accounting and therefore even when the payments are not made the appellant company could very well claimed such expenses which were incurred during the year under consideration whether the payment was made or not and therefore there was no need for the appellant to withdraw such a huge sum during the month of March and therefore it is clear that the appellant's accounts do not manifestly reveal the correct state of affairs. It is also pertinent to note that the appellant had claimed excise duty paid as deduction where as stock in trade was not valued as required u/s 145A of the Income Tax Act. Since the appellant had paid excise duty and claimed as deduction the stock was necessarily required to include such excise element as part of its opening and closing stock having not done so the appellant has shown lesser profit of the affairs of its trading activities. As regard various judicial pronouncements is concerned the appellant has relied on various judgements which in my considered view are of no avail since as a mandatory requirement the assessee is bound to value its stock at the year end to include element of excise duty and sales tax etc. which in the instant case the appellant has failed to demonstrate. Further it is also not in dispute that the appellant had not produced stock register where from the item movement could be verified and therefore from the details filed by the appellant it could not be said that proper income could be ascertained and hence as a necessary consequence the AO was required to reject the books of accounts Thus considering the fact that the appellant company has not filed any explanations in this regard, I am in agreement with the AO that he was justified in rejecting the books of accounts since without the appropriate details the correct income could not be determined. In this regard it would be apt to refer to the observations of Punjab and Haryana high court in case of Surinder Kumar Charanjit Kumar V CIT rep order in 282 ITR 78;

"We are unable to agree with learned counsel. It is true that the accounts regularly maintained by an assessee in the course of business are normally taken as correct unless there are cogent reasons to indicate that they are not reliable, yet it is not possible to lay down the exact circumstances in which these may be rejected as incorrect or unreliable. It is basically a question of fact to be decided on the facts and circumstances of each case. Similarly, a low gross profit rate may not per se lead to an inference that accounts are false but coupled with other relevant circumstances, it does afford a sufficient ground for rejection of the accounts and estimation of profits. In the instant case, the addition made by the Assessing Officer has been restored by the Tribunal not

*merely on account of low gross profit rate, but because of the cumulative effect of non-maintenance of the stock register and manufacturing account and undervaluation of the closing stock.*

*14.1 In the instant case also the AO has clearly found that appellant had not maintained stock records and that circumstances did prevail to estimate the income more so huge withdrawals of cash in March, non inclusion of excise duty in closing stock as per mandatory requirement of section 145A and absence of stock records does lead to conclusion that accounts did not give the true picture of income of the assessee and hence the action of AO was justified.*

*14.2 However considering the facts of the case it is also seen that the AO has estimated the net income @2% of the turnover which considering the overall picture of the case and type of business the appellant is in appears to be an higher side and therefore in all fairness if the income is estimated @1% of the turnover would meet both the ends of justice and accordingly the AO is directed to re-compute the income @1% of the turnover."*

Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative reiterated the submissions made before the lower authorities and submitted that companies in the similar line of business earned a net profit margin of 0.01% to 0.07%, during the year under consideration.

8. On the contrary, learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. In the present case, the lower authorities found various discrepancies in the books of account maintained by the assessee and therefore rejected the same. It is an admitted fact that no stock register has been maintained by the assessee. Even as regards the payment of excise duty, the auditor has mentioned that the assessee is doing the trading activity, however, as per the profit and loss account assessee has adjusted

the excise duty from the sales receipts. Further, the assessee has not valued the stock in trade as required under section 145A of the Act. During the hearing, reliance has been placed upon the statement pertaining to the net profit earned by companies in similar line of business, forming part of the paper book on page 49. However, apart from the statement, no other data has been brought on record to show that these companies are having business similar in nature to the assessee and merely computation of profit for the year under consideration was furnished. Therefore, the submission of the assessee to adopt the profit percentage of other companies also does not merit acceptance. In addition, there is no data available on record regarding the past performance of the assessee. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) in estimating the income at 1% of the turnover. As a result, the grounds raised by the assessee are dismissed.

10. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 13/12/2022

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 13/12/2022**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai