

**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.188/Asr/2019
Assessment Year: 2008-09**

M/s Protection Plus Pharmaceuticals Pvt. Ltd. 126, A/D Gandhi Nagar Jammu. [PAN: AADCP6567D] (Appellant)	Vs.	ITO, Ward-1 (2), Jammu. (Respondent)
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Appellant by	Sh.Ajay Sawhney, CA.
Respondent by	Sh. Radhey Shyam Jaiswal, Sr.DR

Date of Hearing	12.12.2022
Date of Pronouncement	20.12.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals),Jammu, [in brevity the 'CIT (A)'] bearing appeal No.128/14-15, date of order 20.08.2018, the order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2008-09.The impugned order was emanated from the order of the Id. Income Tax Officer Ward-1(2), Jammu, (in brevity the AO) order passed u/s 143(3) of the Act date of order 27.03.2014.

2. Brief facts of the case are that the survey operation u/s 133A was conducted by the revenue in the business premises of the assessee. The assessee had not filed return of income, audit report during the assessment for relevant assessment year. The assessee has claimed that the registered office of the company at Mumbai. But considering this survey jurisdiction the assessment was completed by the jurisdictional AO, Jammu. The issue was challenged before the Id. CIT(A) and the Id. CIT(A) has passed a speaking order in this legal issue. Further in factual position from survey record a document no. 37, invoice bill was found by the Id AO which is related to sale amount of Rs.30,45,020/-. The Id AO had charged net profit on sale @15% which is worked out to Rs.4,56,753/-. The said amount was added back with the total income of the assessee. Being dissatisfied on the order of Id. AO, assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

3. The Id. Counsel had filed an adjournment application before the bench. The assessee was called for hearing. The Id. Counsel for assessee appeared before the bench, requested to withdraw the application & argued the matter in favour of the assessee. The Id. Counsel for the assessee has argued on the factual position and mentioned that the revenue had arbitrarily applied net profit rate @15% on the sale amount to Rs.30,45,020/-.

4. The Id. Sr. DR relied on the order of the Id. CIT(A) and pointed out in the relevant para 5.2 which is extracted as below:

“5.2 I have carefully considered the material on record as well as the observations of the Assessing Officer as made by him in the assessment order while assuming the jurisdiction in this case and thereafter making the impugned addition to the total income of the assessee company by estimation the sales and net profit. I am also of the opinion that the assessee company could not demonstrate that as to how the Assessing Officer has incorrectly assumed jurisdiction in its case and has made the impugned addition. No documentary evidence has also been brought on record which will prove that the jurisdiction of the case of the assessee company lies somewhere else. Even no documentary evidence with regard to filing of income tax returns somewhere else has been brought on record. Under such circumstances, the action of the Assessing Officer in assuming jurisdiction in this case and thereafter making the impugned addition to the total income of the assessee company cannot be said to be unjustified. Having said so, the action of the Assessing Officer in assessing the income of the assessee company at Rs.4,56,753/- after validly assuming jurisdiction in this case is, therefore, upheld. In the result, the grounds No. 1 to 5 of appeal taken by the assessee company are dismissed.”

5. We heard the rival submission and relied on the documents available in the record. During assessment and in the appeal, the revenue had applied net profit

rate@15% on a particular sale of Rs.30,45,020/- whereas the assessee had incurred loss during this year. The application of net profit on sale has no such any logical basis. Only for the non-compliance of the assessee before the revenue authorities the high rate of net profit is applied. In fact, the order was passed by the Id. AO u/s 144 of the Act. Further the assessee had not filed return of income nor filed any supporting document before any of the revenue authorities as well as before the ITAT. The grievance of the assessee is that all the notices of the CIT(A) were served on factory premises & the said factory is closed. No one was there to communicate the service of letter. But the Id. Counsel of assessee has not filed any evidence in favour of his claim. The Id. Counsel was also silent about the non-submission of books of accounts & financial statement before the authorities. We only consider the profit rate on sales which is reasonable higher. So, it is a fit case that a reasonable profit rate should be incurred for the assessee @ 8% on sales amount to Rs.30,45,020/-. So, rate of net profit is restricted to @8% instead of @15%. In the ground the assessee has challenged the legal issue, jurisdiction of the AO which was not pressed by the Counsel during the hearing. The Id. CIT(A) already had taken care the legal issue in the order & passed a speaking order about the jurisdiction AO. We are not intervening the order of the Id. CIT(A) related jurisdiction of AO for passing the assessment order. We ordered accordingly with terms indicated above.

6. In the result, the appeal of the assessee bearing **ITA No. 188/Asr/2019** is partly allowed.

Order pronounced in the open court on 20.12.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By Order