

IN THE INCOME TAX APPELLATE TRIBUNAL
“GUWAHATI BENCH, GAUHATI
VIRTUAL HEARING AT KOLKATA

**Before Shri Rajpal Yadav, Vice-President
and Shri Manish Borad, Accountant Member**

I.T.A. No.472/GTY/2019
Assessment Year: 2016-17

M/s K. B. Associates.....Appellant
Nilomani Phukan Path,
Christian Basti,
Guwahati-781005.
[PAN: AAJFK6526E]

vs.

DCIT, Circle-3, Guwahati.....Respondent

Appearances by:

None appeared on behalf of the appellant.

I. Gyaneshori Devi, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 19, 2022

Date of pronouncing the order : December 29, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to assessment year 2016-17 is directed against the order of the Id. Commissioner of Income Tax(Appeals)-2, Guwahati [hereinafter referred to as ‘CIT(A)'] dated 30.09.2019 is arising out of the order u/s 143(3) of the Act dated 08.12.2018.

2. When the case was called, none appeared on behalf of the assessee. A perusal of the appeal file shows that even after providing opportunity, the assessee failed to appear. It seems that assessee is not interested to pursue the appeal. We, therefore, decide to hear this appeal with the assistance of the Id. Departmental Representative and adjudicate the same on merits.

3. The assessee has raised the following grounds of appeal:

“1. For that the learned Commissioner of Income Tax (Appeals) [CIT(A)] Ought to have hold that the order of assessment passed by the learned Assessing Officer [AO] is bad in law, facts and procedure.

2. For that the learned CIT(A) ought to have hold that huge addition of Rs. 82,30,916/- made by the ld. AO to the business income of the appellant on an arbitrary estimate is without any basis and devoid of all the relevant material on record and hence, bad in law and unsustainable.

3 For that the learned CIT(A) ought to have hold that the ld. AO erred in arbitrarily estimating business income at a fantastic and impossible rate of 50% on a part of business receipt without considering the actual nature of business of the appellant and without any comparable case and ignoring the past history of the case and even after accepting net income 13.87% on balance similar business receipt and such wild estimate is bad in law and untenable.

4. For that the learned CIT(A) ought to have held that the ld. AO assessed business income at a fantastic high rate of 50% of a part of business receipt on estimate basis without apprising the appellant ever of his intention to estimate the profit at such a fantastic rate and leave alone confronting the assessee with the basis thereof and without allowing any opportunity of hearing to the appellant which is in gross violation of principles of natural justice and untenable.

5. For that the ld. CIT(A) ought to have hold that the charge of interest for 13 months under section 234A of the Act by the ld. AO at Rs. 1,49,448/- was bad in law and untenable.

6. For that the ld. CIT(A) was not justified in passing the impugned appellate order ignoring and without controverting the various written submissions of the appellant, only on the basis of surmises and conjectures and without allowing any proper opportunity of hearing to the appellant. The impugned appellate order having been passed in gross violation of principles of natural justice, the same is bad in law and unsustainable.

7. 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.”

4. Brief facts of the case are that the assessee is a partnership firm engaged in providing services. E-return of income for A.Y 2016-17 filed on 14.10.17 declaring income of Rs.49,38,610/-. Case selected for scrutiny through CASS. Notice served u/s 143(2) and 142(1). One of the

reasons of selection for scrutiny is claim of high exempt income and whether the refund claimed was justified. On the subsequent dates of hearing, assessee failed to make proper representation. Ld. A.O concluded the assessment u/s 144 of the Act rejecting the assessee's books of account 145(3) of the Act and based on the TDS details available on Form 26AS showing the receipts at Rs. 2,60,71,952/-, ld. A.O estimated the net profit @50% of the total turnover and calculated the estimated net profit at Rs.1,30,35,976/-. Since the assessee has shown net profit @18.43%, a difference of the said amount i.e. Rs.82,30,916/- was added to the total income of the assessee. Income assessed at Rs.1,31,69,530/-.

5. Aggrieved, assessee preferred appeal before the ld. CIT(A). Detailed submissions filed along with the net profit offered by the assessee in the preceding two assessment years. The ld. CIT(A) was not satisfied with the submissions and confirmed the findings of the ld. A.O.

6. Aggrieved, assessee is now in appeal before this Tribunal. The ld. Departmental Representative vehemently supported the orders of both the lower authorities.

7. We have heard the ld. DR and perused the records placed before us. The effective grounds are Ground Nos.2,3&4, through which the assessee has raised the issue that ld. CIT(A) erred in confirming the application of net profit rate of 50% of the business receipts as against 13.87% of net profit declared by the assessee. We notice that the assessee company has declared net income of Rs.49,38,610/- in the return filed u/s 139(1) of the Act. The assessee is engaged in the business of collection and recovery of overdue instalments from customers on behalf of bank, financial institutions and NBFs. TDS of Rs.26,07,234/- deducted on the gross receipts of Rs.2,60,71,952/-

which was received from four parties of which mainly Rs.2,14,26,653/- and Rs.38,33,011/- were received from HDFC Bank Ltd. and Capital First Ltd. Also during the course of appellate proceedings before the Id. CIT(A), the comparative detailed of gross receipts and net profit offered were filed and the same are reproduced below:

“2.3 The past accepted position of income and turnover in the case of the appellant itself is as under:

<i>Particulars</i>	<i>Asst. Year 2014-15</i>	<i>Asst Year 2015-16</i>	<i>Asst Year 2016-17</i>
<i>1 Receipts in respect of which TDS Was made u/s 194</i>	<i>1,54,44,518</i>	<i>2,22,19,584</i>	<i>2,60,71,952</i>
<i>2. Other receipt</i>	<i>78,68,891</i>	<i>48,24,969</i>	<i>95,21,959</i>
<i>3. Total Receipts (1+2)</i>	<i>2,33,13,409</i>	<i>2,70,44,553</i>	<i>3,55,93,911</i>
<i>4. Income assessed</i>	<i>15,38,165</i>	<i>31,51,648</i>	<i>4938,610(returned)</i>
<i>5. Income as % of Turnover (4/3x100)</i>	<i>6.60%</i>	<i>11.65%</i>	<i>13.87% (Returned)</i>
<i>6 Section under which assessment made</i>	<i>143(3)</i>	<i>143(1)</i>	<i>Under appeal</i>

From the above details, we find that net profit rate declared by the assessee is @6.60% and 11.65% during the A.Y 2014-15 and 2015-16. This year even a better net profit rate is declared. The Id. CIT(A) while deciding the appeal seems to have not appreciated this fact about the past history of net profit rate offered by the assessee. Even, the Id. A.O seems to have not been fair in estimating net profit rate @50% which is quite excessive considering the case of the assessee and its past history. Though the assessee had not appeared before the A.O on the requisite dates of hearing but before the Id. CIT(A) detailed submissions along with complete details have been filed. This fact cannot be ignored that the case of the assessee was assessed u/s 143(3) of the Act for A.Y 2014-15 and net profit rate of 6.60% has been accepted by the revenue authorities.

8. Under the given facts and circumstances of the case, considering the past history of the net profit rate offered by the assessee, and simultaneously considering the fact that the assessee did not appear before the A.O books of accounts not produced and even before Id. CIT(A), complete details of expenses has not been filed and also considering that there is an increasing trend of net profit rate offered by the assessee, we thus being fair to both the parties and in the interest of justice direct the A.O to estimate the net profit of the assessee @25% as against 50% estimated by Id. A.O. The assessee gets part relief and Ground Nos.2, 3& 4 raised by the assessee are partly allowed.

9. Ground Nos.1, 6 & 7 are general in nature and Ground No.5 is consequential.

10. In the result, the appeal of the assessee is partly allowed.

Kolkata, the 29th December, 2022.

Sd/-
[Rajpal Yadav]
Vice-President

Sd/-
[Manish Borad]
Accountant Member

Dated:29.12.2022.

RS

Copy of the order forwarded to:

1. M/s K. B. Associates
2. DCIT, Circle-3, Guwahati
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches