

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE

SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.427/Hyd/2022		
Assessment Year: 2017-18		
Amar Chand Adania, 77, Nagole X Road, Hyderabad – 500074, Telangana. PAN : ACZPA3992L	Vs.	The Income Tax Officer, Ward – 9(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri R. Mohan Kumar	
Revenue by:	Shri Waseem UR Rehman	
Date of hearing:	03.01.2023	
Date of pronouncement:	03.01.2023	

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M :

Aggrieved by the order(s) dated 22.07.2022 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Amar Chand Adania, ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Assessee is an individual and admittedly, he did not file any return of income for the A.Y. 2017-18. Learned Assessing Officer, however, noticed that there was a credit of cash to the tune of Rs.16,37,500/- in the

South Indian Bank, Kothapet Branch, Hyderabad hold by the assessee. Learned Assessing Officer issued notices under Section 142(1) of the Act but in spite of repeated demands, the assessee failed to file the return of income, thereby compelled the learned Assessing Officer to proceed on the best judgment basis.

3. Learned Assessing Officer obtained the information from the bank through the process of section 133(6) of the Income Tax Act, 1961 (hereinafter referred as "the Act") and found the total credits to the bank account of the assessee during the F.Y. 2016-17 were to the tune of Rs.3,26,91,766/- and that the assessee was into the business of Electrical Hardware, Paints and Sanitary trade and held business transactions with M/s. Asian Paints, M/s. Arihant Combines, M/s. Surya Cem Private Limited, M/s. Sai Coat Paints, M/s. NCL Altek Sector, M/s. Pooja Trading Company etc. According to the learned Assessing Officer in tune with the line of business of the assessee and the transactions he had with various business parties, an estimate of net profit at 8% of gross receipts would be reasonable. Learned Assessing Officer, however, proceeded to estimate the net profit at 10% on the deemed total turnover and added the same at Rs.32,69,178/- to the income of the assessee.

4. Against such an action of the learned Assessing Officer, assessee preferred this appeal and pleaded that the assessee was under medical care and that is the reason why his case could not be prosecuted diligently. Further, he stated that he was in the exclusive business of Paints and not in any hardware business, as opined by the learned Assessing Officer. Net margin available to the assessee was only in the range of 2% on the turnover and therefore, the estimation of net profit made by the learned

Assessing Officer at 10% on the deemed total turnover is excessive and has to be deleted.

5. Assessee preferred the appeal with delay and the Id.CIT(A) thought it fit to condone the delay. Ld.CIT(A) however, did not find any merit in the contentions raised by the assessee and held that the initial burden is on the assessee to prove his contention in receipt of the source of cash deposits and therefore, upheld the addition of Rs.32,69,178/-.

6. Assessee is, therefore, before me in this appeal stating that the authorities below did not appreciate the facts on record properly and since the only business of the assessee is in Paints where the profit margin is not upto 10%, the estimate made by the learned Assessing Officer and upheld by the Id.CIT(A) is not proper and without any basis. Basing on this statement that any estimation either at 10% or 8% whatsoever is without any basis, the addition has to be deleted on the deemed total turnover.

7. Per contra, it is the submission on behalf of the Revenue that the assessee cannot take advantage of his own mistake, and nothing prevented the assessee from establishing the veracity of his contentions before the authorities below. Ld.DR brought to my notice the various opportunities afforded by the authorities to the assessee to put forth his contention and to get the matter disposed of on merits. However, according to the Id.DR, the learned Assessing Officer had taken a lenient view in treating the entire cash deposits as business receipts as the cash deposits were found during the demonetization period giving rise to the suspicion about the source of such receipts. Be that as it may, Id.DR's

contention is that there are no merits in this appeal and this appeal has to be dismissed in limine.

8. I have gone through the record in light of the submissions on either side. At the outset, the assessee produced certain material before me in the form of statement showing the sales, gross profit ratio, net profit ratio, gross total income, total income and the returns of income for the A.Ys. 2014-15 to 2021-22 baring this particular year. Along with this, the assessee also produced certified copies of returns of income, computation of income, profit and loss account, balance-sheet and other information relating to the purchases and sales supported by invoices and bank accounts. According to the Id.AR, all these documents could not be produced before the authorities below the view of the fact that the assessee was bedridden. He, however, submits that these documents would unmistakably point out that the margins in his business are not exceeding 4.9% at any point of time.

9. Ld.DR submitted that these documents could have produced before the learned Assessing Officer or atleast before the Id.CIT(A) so as to enable them to take a just view in respect of the estimate that has to be made for this particular year. Be that as it may, all the endeavour of the tax authority is to reach the correct tax liability of the assessee and, therefore, I am of the considered opinion that receiving the documents at this stage does not prejudice the case of the revenue inasmuch as the plea of the assessee that due to ill-health, he could not prosecute the case diligently. Moreover, most of the record is claimed to be available with the revenue in the shape of the supporting documents to the returns of income filed for the earlier and subsequent assessment years. With this view of the

matter, I am inclined to receive this documentary evidence for the purpose of verification at the end of the learned Assessing Officer.

10. It could be seen from the figures furnished by the assessee in the shape of Chart which forms part of this appeal, that the assessee furnished the relevant figures along with the returns of income for A.Y.s. 2014-15 to 2016-17, 2018-19 to 2021-22 and from this Chart, I find that the net profit ratio declared was 4.9% at the higher in the A.Y. 2018-19. Though, the learned Assessing Officer recorded in his order at para No.7 that in view of the line of the business of the assessee, the net profit could be estimated at 8% of the turnover, when the calculation part has come, for the reasons best known to him, he adopted 10% as the net profit vis-à-vis the deemed turnover. Though the assessee argued before me that there was no basis for the estimate, interestingly, assessee himself furnished the basis for the estimate, and the figures furnished by the assessee themselves show that the net profit at no point of time was 2% as claimed by him, and it is always something more.

11. I, therefore, reject the contention of the assessee that the estimate must be at 2%. Having regard to the contention of the assessee keeping in view the business and the figures furnished by him, I am of the considered opinion that the net profit could reasonably be estimated at 5%, subject to the condition that the figures and materials furnished by the assessee are found to be genuine at the end of the learned Assessing Officer. With this view of the matter, I set aside the impugned orders and restore the issue to the file of the learned Assessing Officer to verify the genuineness of the facts and figures furnished by the learned Assessing

Officer in the form of additional evidence, and if such material is found correct, to adopt the net profit at 5% of the total deemed turnover.

12. At this stage, the Id.AR submitted that while taking the deemed turnover at Rs.3,26,91,776/-, the learned Assessing Officer inadvertently had taken this figure which is inclusive of the opening balance, so that it would be just and proper to exclude that opening balance while estimating the turnover of the order. The learned Assessing Officer will take care of it, after affording opportunity to the assessee of being heard. I make it clear that this is the last opportunity to the assessee to appear before the learned Assessing Officer and get the matter disposed of on merits.

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 3rd day of January, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 03 /01/2023
TYNM/SR.PS

Copy forwarded to :

S.No	Addresses
1.	Amar Chand Adaniaa, 77, Nagole X Road, Hyderabad – 500074, Telangana.
2	The Income Tax Officer, Ward – 9(3), Hyderabad.
3	CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi.
4	DR, ITAT, Hyderabad Benches
5	Guard File.

By Order