

आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : NAGPUR

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND
SHRI DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.378/NAG/2017
निर्धारणवर्ष / Assessment Year : 2012-13

Gajanan Mahadeorao Mendhe, 122, Gajavandan Shankar Nagar Baji Prabhu Nagar, Nagpur – 440010. PAN: AAUPM 9125 A	Vs.	The Assistant Commissioner of Income Tax, Circle-1, Nagpur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Manoj G Moryani – Adv.
Revenue by	Shri G.J.Ninawe – DR
Date of hearing	15/11/2022
Date of pronouncement	10/01/2023

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for Assessment Year 2012-13 is directed against the Commissioner of Income Tax(Appeal)-1, Nagpur's order dated 31.08.2017 passed in case no.CIT(A)-1/126/2015-16, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short "the Act"].

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal:

“1. *The order passed by learned Commissioner of Income Tax (Appeals)-I, Nagpur U/s. 143(3) is illegal, invalid and*

bad in law.

2. *The learned Commissioner of Income Tax (Appeals)-I erred in confirming the addition made by the assessing officer and estimating the profit @ 8% of Gross Receipts from Job Works by confirming income of Rs. 1,06,80,886/- to other income, therefore order passed is unjustified, unwarranted and excessive.*
3. *The learned Commissioner of Income Tax (Appeals)-I erred in confirming the addition made by the assessing officer and estimating the profit @ 5% of Gross Receipts of manufacturing activities by confirming income of Rs. 8,30,891/- to other income, therefore order passed is unjustified, unwarranted and excessive.*
4. *The learned Commissioner of Income Tax (Appeals)-I erred in not considering the fact that the due to unavoidable crash of the computer harddisk assessee unable to produce the books of account, therefore order passed is unjustified, unwarranted and excessive.*
5. *The learned Commissioner of Income Tax (Appeals)-I ought to have considered the fact that the due to crash of the computer hard disk assessee and erred in not granting opportunity to submit the books of account, therefore order passed is unjustified, unwarranted and excessive.*
6. *The learned Commissioner of Income Tax (Appeals)-I, ought to have accepted the audited Profit & Loss and ought to have considered no defect has been pointed out by the assessing officer in the Audit Report as well as in the details submission made by the assessee, therefore order passed is unjustified, unwarranted and excessive.*
7. *The appellant seeks permission to add any other ground of appeal or amend or alter the aforesaid ground of appeal at the time of hearing of the appeal.”*

3. Suffice to say, it emerges during the course of hearing that the assessee presses only regarding the quantum of the impugned profit estimation taken at 8.17% in light of the assessment order dated 30.03.2015, then that accepted @ 3.28% in A.Y. 2011-12 and 4.3% in A.Y. 2013-14; respectively.

4. Learned DR could hardly dispute that the Assessing Officer has been taken guidance from section 44AD of the Act for arriving at above mentioned net profit rate qua assessee's turnover of Rs.13,35,11,075/- than having compared market trends in the concerned manufacturing segment. The very factual position continues from the taxpayer's side as well wherein he could not file all the relevant material in support of its net profit rate of 2.77% only.

5. Faced with this situation, we deem it appropriate that a lump-sum of net profit rate of 4.5% only than that @5% in issue would be just and proper with a rider that the same shall not to be treated as a precedent in any other case. Necessary computation shall follow as per law.

No other ground or argument has been raised before us during the course of hearing.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 10th January, 2023.

Sd/-
(DR.DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th Jan, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.