

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 369/Srt/2019 (Assessment Year 2012-13)
(Physical hearing)

| | | |
|--|-----|-----------------------------------|
| Shital Refrigeration, ¾, Dawoodi Shopping Centre, Panch Fanas, Station Road, Bharuch, Gujarat. PAN No. AAGFS 9796 P | Vs. | I.T.O., Ward 1(2), Bharuch. |
| Appellant/ assessee | | Respondent/ revenue |

| | |
|---------------------------|--|
| Assessee represented by | Shri Krutarth Desai, Advocate with Ms. Disha Kharod, CA |
| Department represented by | Shri Vinod Kumar, Sr.DR |
| Date of hearing | 03/02/2023 |
| Date of pronouncement | 03/02/2023 |

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Vadodara, (in short, the Id. CIT(A)) dated 23/05/2019 for the Assessment year (AY) 2012-13 wherein the assessee has raised following grounds of appeal:

- “1. The Id. CIT(A) ought not have upheld the action of the Assessing Officer of estimating income @ 10% of gross turnover for the year under consideration.*
- 2. The appellant craves for leave to add or amend any of the grounds of appeal.”*

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of selling of electronic goods on retail basis. The assessee filed its return of income for the A.Y. 2012-13 on 30/09/2012 declaring total income of Rs. 86,680/-. The case of assessee was selected for

scrutiny. During the assessment, the assessee was asked to furnish month wise quantitative details with name and address of the persons from whom the assessee made purchase of goods and the agreement of dealership with supplier and to produce the books of account with supporting vouchers. The Assessing Officer noted that the assessee failed to produce quantitative details. Since no detail was furnished, the Assessing officer again issued show cause notice as to why the book results shown by the assessee is not rejected by invoking provisions of Section 145(3) of the Income Tax Act, 1961 (in short, the Act) and to estimate profit @ 10% of total turnover. In response to such show cause notice, the assessee stated that there are numerous items for maintenance and furnishing of such quantitative details are very difficult and prayed to accept the profit declared by the assessee in the return of income. The reply/explanation of assessee was not accepted. In absence of any detail, the Assessing Officer rejected the books of account and estimated the gross profit @ 10% thereby estimating the profit of Rs. 42,61,167/- against the gross profit declared by the assessee at Rs. 32,99,724/-. The Assessing Officer worked out a difference of Rs. 9,61,443/-.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The submission of assessee is recorded in

para 3 of order of Id. CIT(A). In the submission, the assessee submitted that details required by the Assessing Officer during the assessment proceedings, the assessee requested for granting more time for preparation of quantitative details, it was not the stand of assessee that the assessee refused to submit the details. The assessee could not prepare the details in time as their accountant was not available. Except quantitative details, all bills/vouchers and books of account were produced for verification before the Assessing Officer. The Assessing Officer rejected the books of account and estimated 10% of gross profit. The assessee submitted that when books were rejected, the profit should have been estimated in accordance with Section 44AD of the Act. However, the gross profit is estimated without any justification. The assessee prayed to estimate the profit @ 8%.

4. The Id CIT(A) after considering the submissions of the assessee that while deciding the appeal of assessee for A.Y. 2011-12 vide order dated 16/12/2015, his predecessor upheld the estimation of 10% gross profit of turnover which is reasonable and quite fair. Thus, by following the order of A.Y. 2011-12, the Id. CIT(A) upheld the action of Assessing Officer for this year as well. Further aggrieved, the assessee filed the present appeal before this Tribunal.
5. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental

Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that he has a very limited prayer before the Bench that the Assessing Officer after rejecting of books result, estimated profit @ 10%. The Id. AR submits that the Assessing Officer while rejecting books or account, has not specified any defect in the books of account. The assessee is regularly following the similar method of accounting and there is no deviation so the books result declared by the assessee should have been accepted. In alternative submission, the Id. AR of the assessee submits that in three preceding assessment years, the assessee has declared average gross profit @ 8.5% on his total turnover i.e. 8.69% in F.Y. 2008-09, 8.74% in F.Y. 2009-10 and 8.35% in F.Y. 2010-11, therefore, a reasonable profit may be estimated.

6. On the other hand, the Id. Sr. DR for revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that the lower authorities have estimated 10% of the profit on total turnover which is quite reasonable and justified. Moreover, the Id CIT(A) followed the order of preceding year, which has become final.
7. In the short rejoinder submits that earlier year order of CIT(A) was not challenged due to the small addition, but it should not be treated as a precedent as the assessee has consistently showing good gross profit.
8. I have considered the submissions of both the parties and have also perused the orders of the lower authorities carefully. I find that in the

present appeal, there is very short grievance of the assessee that this book results was rejected without specifying any reason and average gross profit in three preceding year under consideration were 8.5% which may be allowed in the year under consideration. On perusal of order of Id. CIT(A), I find that the Id. CIT(A) while confirming the order of Assessing Officer, followed his own order for A.Y. 2011-12 wherein similar estimation was made by Assessing Officer and was confirmed by the Id. CIT(A). Considering the facts and circumstances of the case that the assessee has declared gross profit @ 7.74% which was below the preceding year, the Assessing Officer sought certain details for verification of profit declared by assessee. The Assessing Officer after recording the fact that the assessee failed to produce the requisite details, rejected the book result and estimated profit @ 10% of turnover. I find that in preceding assessment year, the assessee has declared gross profit @ 8.35%. Similar treatment was made in said assessment year in estimating 10% of the profit. Such estimation was confirmed by the learned first appellate authority. No further appeal was filed before the Tribunal. Before me, the Id. AR of the assessee vehemently alleged that 10% of gross profit is on higher side and the assessee has already declared reasonable profit. No appeal was filed for earlier year due to smallness of addition. Considering the facts and circumstances of the case and nature of business, the profit estimated by the Assessing Officer

and confirmed by the Id. CIT(A) is reduced to 8.75% of the total turnover, thereby, the assessee is given part relief. The assessing officer is directed accordingly.

9. In the result, this appeal of assessee is partly allowed.

Order pronounced in the open court on 3rd February, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 03/02/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat