

| आयकर अपीलिय अधिकरण न्यायपीठ, गुवाहाटी।
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 111/GTY/2020
Assessment Year: 2017-18

ITO, WARD- NAGAON	Vs	Smt. Manumati Boro M/s. Joy Fuel Station Dhing Road, Kawaimari Nagaon Assam - 782002 [PAN : BQEPB3815M]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rahul Jain, FCA
Revenue by :	Shri N.T. Sherpa, JCIT

सुनवाई की तारीख/Date of Hearing : 09/01/2023
घोषणा की तारीख /Date of Pronouncement: 20/02/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the revenue against the order of the learned Commissioner of Income Tax (Appeals) - Guwahati-1, (hereinafter the "Id. CIT(A)") dt. 28/02/2020, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2017-18.

2. The revenue has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.2,39,42,814/- as undisclosed sales and estimated profit of the outside book sales at 3.9% of Rs.2,39,42,814/- (i.e Rs.9,33,770/-).

2. That the Ld CIT (A) has not considered the fact that the assessee has unrecorded sales of Rs.2,39,42,814/- which has been duly reflected in her daily sales register with identification mark JFS/I/1, impounded during the course of survey u/s 133A of the Income Tax Act, 1961 conducted by the department and has failed to furnished any supporting documents to explain the reason for the difference in the sales as per her daily sales register and sales as per her books of accounts. Hence the impugned order of the Ld. CIT (A) is liable to be quashed and the order of the Assessing Officer be restored.

3. The Ld CIT (A) has erred in accepting the undisclosed sales as turnover and estimated income @3.9% on the under reported sales.

4. The Appellant craves the leave to add/modify/alter any of the ground during the course of hearing /pendency of appeal."

3. Brief facts of the case are that the assessee is an individual and engaged in the business of running a petrol pump. E-return for the Assessment Year 2017-18 was filed on 28/03/2018 declaring total income of Rs.13,26,310/-. Case manually selected for compulsory scrutiny followed by notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings, the ld. Assessing Officer referred to the survey proceedings carried out u/s 133A of the Act, conducted at the business premises of the assessee on 01/03/2017. Based on the daily sales recording register with identification mark JFS/I/-1, impounded during the course of survey, the ld. Assessing Officer came to the conclusion that assessee has not disclosed sales of Rs.2,39,42,814/-. It was contended on behalf of the assessee that they are not very well-versed in accounting and the total purchases are from Bharat Petroleum and sales were made as per the prevailing rates as directed by Bharat Petroleum Ltd.. However, the ld. Assessing Officer was not satisfied and he completed the assessment making addition for undisclosed sale at Rs.2,39,42,814/- and assessed income at Rs.2,52,69,128/-.

3.1. Aggrieved the assessee preferred an appeal before the ld. CIT(A) who after considering the submissions of the assessee which was filed through online mechanism also considering the net profit rate offered by the assessee in past and also the fact that purchases were duly disclosed, sustained the addition only to the extent of 3.90%, being net profit on the alleged undisclosed sale and partly allowed the assessee's appeal.

4. Aggrieved the revenue is in appeal before this Tribunal.

5. The ld. D/R, relied on the order of the ld. Assessing Officer while the ld. Counsel for the assessee supported the order of the ld. CIT(A).

6. We have heard rival contentions and perused the record placed before us.

7. Through this appeal, the revenue has challenged the finding of the Id. CIT(A) deleting the addition for undisclosed sale and sustaining the addition only to the extent of net profit element embedded in the alleged undisclosed sale. We notice that the Id. Assessing Officer based on the seized records impounded during the course of survey, made the addition for undisclosed sale of Rs.2,39,42,814/-. The Id. CIT(A) after making a detailed discussion and also referring to various judgments including that of Hon'ble Gujarat High Court in the case of *CIT vs. President Industries (2002) 258 ITR 654*, came to the conclusion that since the purchases are not in dispute, only the net profit on the said undisclosed sales can be subjected to tax and for arriving at this conclusion, the Id. CIT(A) observed as follows:-

"It is noted that the Appellant during the above assessment year was running a petrol pump and the entire purchases were being made by the Appellant from Bharat Petroleum Ltd. Thus, while the purchases cannot be doubted upon, the fact that the Appellant could have executed sales at a price which is higher than the price notified on daily basis by the Oil Marketing Companies is completely ruled out. In the nature of business in which the Appellant was engaged during the above assessment year, the margins are too bleak and narrow. Further the finished good, i.e. Oil, Petroleum, Diesel etc. gets evaporated. Though the AO had added the entire purported outside books sales, the AO could not bring on record any material as would prove that the Appellant had made any outside books purchases or that the purported customers to whom petrol and diesel was sold were charged exorbitantly over and above the price regulated for petrol and diesel by the Oil Marketing Companies (OMCs).

In view of the ratio of the above judgments and discussion, it is clear that while the entire "outside books" sales cannot be brought to tax, at the same time only at reasonable gross profit rate is required to be estimated. In the case of the Appellant, the Appellant is running a petrol pump wherein the returned GP rates of the Appellant are being tabulated as under:

<i>Particulars</i>	<i>AY 2015-16</i>	<i>AY 2016-17</i>	<i>AY 2017-18</i>
<i>Gross profit</i>	2550631	4148350	6366340
<i>Turnover as per the books</i>	88084206	145579492	163040120
<i>Gross profit rate</i>	2.90	2.85	3.90

Considering the higher profit rate of 3.90%, the profit on the "outside books" sales made by the Appellant for the assessment year 2017-18 is being estimated at Rs 9,33,770/- (3.90% of outside books sales of Rs 2,39,42,814/-).

In view of the above discussion, the addition made by the AO to the above extent is sustained and the balance addition made of Rs.2,30,09,044/- (i.e., Rs.2,39,42,814/- less Rs.9,33,770/-) is, hereby, deleted. The above ground of appeal is, accordingly, partly allowed."

8. The above finding of the Id. CIT(A) is in line with the judicial precedents as held consistently including in the judgment of the Hon'ble Gujarat High Court in the case of *President Industries (supra)*, as well as by the decision of the ITAT Delhi Bench in the case of *Anil Kumar Bajaj vs. DCIT* in ITA No. 4392/Kol/2014; dt. 28/06/2018. We fail to find any infirmity in the order of the Id. CIT(A) who has rightly taken into consideration the net profit offered by the assessee in the last three years and has also taken into consideration that purchases made by the assessee are only made from Bharat Petroleum Ltd. and the Id. Assessing Officer has not disputed the said purchases and since the sale prices are not in control of the assessee and they have to be kept as per the rates decided by the oil marketing companies, the margin of profit can only be subject to tax. Thus, since the Id. CIT(A) has applied highest of the net profit rate i.e., 3.90 % on the alleged undisclosed sales, we do not find any reason to interfere in the said finding.

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Thus, the effective ground of appeal raised by the revenue stands dismissed. Other grounds raised by the revenue being general in nature need no adjudication.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 20th February, 2023 at Guwahati.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 20/02/2023

SC S.P.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, गुवाहाटी /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati