

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

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 84/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Padmaja Sheri,  
Hyderabad  
[PAN No. BGAPS6678F]

Income Tax Officer,  
Vs. Ward-7(1),  
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Hari Agarwal, AR

राजस्व द्वारा/Revenue by: Shri B. Sunil Kumar, DR

सुनवाई की तारीख/Date of hearing: 27/02/2023

घोषणा की तारीख/Pronouncement on: 28/02/2023

आदेश / ORDER

Aggrieved by the order dated 14/02/2019 passed by the learned Commissioner of Income Tax(Appeals)-8, Hyderabad ("Ld.CIT(A)") in the case of Smt. Sheri Padmaja ("the assessee") for the assessment year 2014-15, assessee preferred this appeal.

2. Assessee is an individual and proprietor of M/s. Universal Party Sales engaged in the wholesale business of Tupperwear products under a tri-patriate agreement with Tupperwear India Pvt. Ltd., and Oyster Party Sales whereunder gross margin allowed to her was 16% on sales and the assessee has to bear all the expenses. For the assessment year 2014-15, she filed the return of income on 27/11/2014 declaring an income of Rs. 6,26,510/-. During the scrutiny, learned Assessing Officer found the

purchase and sales of the assessee at Rs. 1,86,92,153/- and Rs. 2,33,38,526/- respectively, and the assessee claimed expenses at Rs. 45,47,596/-. According to the learned Assessing Officer, the assessee has not submitted any verifiable evidences to support the expenditure and, therefore, while rejecting the books of accounts, he estimated the profit of the assessee at 10% of the sales which came to Rs. 23,33,852/-. Apart from this, learned Assessing Officer also brought to tax a sum of Rs. 6,27,728/- the un-explained commission paid reflected in Form 26AS.

3. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A). Learned CIT(A) recorded that in spite of granting several opportunities, the assessee failed to avail the same and, therefore, holding that there is no material on record to contradict the findings of the learned Assessing Officer, learned CIT(A) dismissed the appeal and confirmed both the additions.

4. Assessee preferred this appeal contending that estimate of net profit at 10% of the turnover is not only arbitrary but also exorbitant and the learned Assessing Officer should have spelt out the basis for such estimate at 10%, lest the rate of estimate appears to be capricious. Learned AR further submitted that the alleged commission is not paid but received by the assessee towards reimbursement of the payments of incentives made to the sales people. It is further contended that the so called commission is not received in cash but was an adjustment through credit notes and, therefore, the same were credited to the P&L Account and reflected in the books of accounts as regular business activity. He submits that the said commission is subsumed into the business income and, therefore, cannot be taxed separately.

5. Per contra, learned DR submitted that as recorded by both the authorities below the assessee did not co-operate with the assessment proceedings and at no point of time she entered appearance before the authorities nor did she produce any evidence in support of the expenditure

said to have been incurred. He submitted that there are no grounds interfere with the findings of the authorities below.

6. I have gone through the record in the light of the submissions made on either side. There is no dispute that the assessee maintained books of accounts, such accounts were audited and the tax audit report was filed before the learned Assessing Officer and it is only on looking into the financials of the assessee, the learned Assessing Officer found out the purchases and sales and also the claim of expenditure. Only ground for the rejection of the books and going for estimate of net profit by the learned Assessing Officer is that the assessee did not produce the supporting evidence in respect of the expenditure. Learned Assessing Officer does not dispute the purchases and sales.

7. Learned Assessing Officer estimated the net profit at 10% of the turnover. No basis for this rate of estimate is spelt out in the assessment order. When the learned Assessing Officer makes the assessment to the best of his judgment, he must have regard to the nature of business, the margins derived in the market and the earlier and subsequent years' margins in assessee's own case. However, no such exercise is done by the learned Assessing Officer nor by the learned CIT(A).

8. It is the submissions on behalf of the assessee that for the assessment year 2015-16, the assessee reported net profit at 3.03% of the turnover and the same was accepted. Further, under the tri-patriate agreement, and also the appointment letter the assessee is entitled to 16% margin normally and if she achieves the sales goal of Rs. 14,14,81,719/- per annum, she will be entitled the same at 18%. Assessee has to meet the expenditure at her end. The Trading, P&L Account for the year ended on 31/03/2014 shows the gross profit of the assessee at 9.7% out of which the expenditure, whatever may be quantity, has to be deducted. At any rate net profit will be less than 9.7% and, therefore, it appears to me that the estimate of net profit at 10% of the turnover is not justifiable.

9. Having regard to these circumstances, and by taking a realistic estimate keeping in view the net profit reported and accepted for the assessment year 2015-16, I am of the considered opinion that the ends of justice would be met if the estimate is made at 5%. With this view of the matter, I set aside the impugned orders and direct the learned Assessing Officer to take the net profit at 5% of the turnover.

10. Coming to the commission amount, a perusal of Form 26AS, a copy of which is to be found at page No. 32 of the paper book shows that the assessee is not the deductor but the deductor was Tupperware India Private Limited. It could be seen from the P&L Account of the assessee that this commission received is reflected therein. It is, therefore, clear that such commission received is credited to the P&L Account supporting the contention of the assessee that such commission was not directly received by the assessee and adjusted through credit notes. Since the net profit of the assessee is to be estimated at 5% of the turnover, it will take care of this amount also. Hence, learned Assessing Officer will delete this addition.

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

Order pronounced in the open court on this the 28<sup>th</sup> day of February, 2023.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 28/02/2023

TNMM

Copy forwarded to:

1. Padmaja Sheri, Villa No. 117, Vesella Meadows, Ibrahimbagh Village, Golconda, Hyderabad.
2. Income Tax Officer, Ward-7(1), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD