

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA**  
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 733/Kol/2022**  
**Assessment Year : 2017-18**

THE CHEERS	Vs.	ACIT, CIRCLE-26(1), Kolkata
PAN: AAFT 9590 J		
Appellant		Respondent

Date of Hearing	27.02.2023
Date of Pronouncement	15.03.2023
For the Assessee	Shri A.B. Maitra, Advocate
For the Revenue	Smt. Ranu Biswas, Addl. CIT, Sr. DR

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

This is appeal filed by the assessee directed against the order of ld. CIT(A), NFAC dated 28.10.2021 passed u/s 250 of the I.T. Act relating to assessment year 2017-18. The assessee has raised the following grounds of appeal:

*"i. For that the ld. CIT(A) erred in confirming the addition of Rs. 10,13,922/- on the alleged reason that on comparative loss with profit of last years the profit was lower although he had no evidence to prove the so-called scientifically analyzed book profit and no evidence to detect any part of expenses were inflated or suppressed.*

*ii. For that the ld. CIT(A) should have considered that ld. Assessing Officer never rejected the book result u/s 145(3) or the never detected any defect in the accounts or expenses as placed before him and as such the entire addition as aforesaid based on surmises and conjectures is illegal, arbitrary and without jurisdiction as it seeks to violate the principles of justice.*

*iii. For that the ld. CIT(A) was not justified in confirming the addition by the Assessing Officer on the basis of average profit on estimated basis without pointing any defect in the accounts and without investigating that on account of opening of new shop in the area the appellant had to scale down profit.*

*iv. For that the ld. CIT(A) erred in holding that the explanation of low profit submitted by the appellant was not satisfactory although he had no evidence to prove that the explanation was not proper and as such the entire addition is not in accordance with law and should be deleted from the point of equity and justice.*

*v. For that the appellant craves leave to file additional ground/grounds of appeal at the time of hearing.”*

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of **Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020**, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. Brief facts of the case are that the assessee is a partnership firm and filed its return of income on 19.12.2019 by disclosing income of Rs. 1,35,400/-. The case of the assessee was selected for scrutiny through CASS. Consequent to the statutory notices were issued upon the assessee. The ld. AO while scrutiny of the return of income balance sheet profit and loss account for the assessment year 2014-15 to 2017-18 turnover ratio as appeared in the following manner:

<i>F.Y.</i>	<i>Book Profit/Turnover</i>	<i>Ratio</i>
<i>2013-14</i>	<i>10,05,515/- / 4,09,29,202/-</i>	<i>2.46%</i>
<i>2014-15</i>	<i>16,28,989/- / 4,75,34,444</i>	<i>3.43%</i>
<i>2015-16</i>	<i>22,92111/- / 5,67,91,540/-</i>	<i>4.03%</i>

The average turnover ratio comes to 3.32% (2.46% + 3.46% + 4.03% /3)

3. However, the assessee firm has disclosed book profit turnover ratio 1.59% which was very low compared to last three preceding previous years. Therefore, the ld. AO calculated the book profit ratio 3.32% instead of 1.59% by comparing assessee's last three years audited accounts in the following manner:

*“Book profit as per average book profit (BP)/Turnover ratio: Rs. 19,47,728/- of the three preceding previous years i.e. F.Y. 2013-14, 2014-15 & 2015-16 (3.32% of Rs. 5,86,66,518/-)*

*Less: Book profit disclosed in the return of income for the A.Y. 2016-17 Rs. 9,33,805/-.”*

4. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) and the ld. CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the above order of ld. CIT(A), assessee has filed the instant appeal before the Tribunal.

6. The assessee has filed the instant appeal enumerating five grounds before the Tribunal for adjudication. However, the effective issue that is addition of Rs. 10,13,923/- on the reason that the comparative loss with profit of last years. The profit was lower and the ld. AO made the addition on the estimated basis by applying average of last three years book profit/turnover ration without rejecting the books of accounts u/s 145(3) of the Act. The

ld. AR submitted before us that the ld. AO has made the addition on estimated basis without rejecting the books of accounts filed by the assessee before the AO. The fact is that the assessee has maintained books of accounts and those are duly audited u/s 44AB of the Act and the ld. AO had never detected any defects in the accounts or expenses as submitted before him during the assessment proceedings and the addition was made by the ld. AO based surmises and conjectures. Therefore, the said addition is liable to be set aside. On the other hand, ld. DR relied on the decision rendered by the authorities below and he has supported the order passed by the ld. CIT(A) as well as ld. AO.

7. We after hearing the rival submission of the parties noticed that the assessing officer made the addition on the estimated basis without having rejected the books of accounts filed by the assessee at the time of hearing before him as the accounts maintained by the assessee were duly audited u/s 44AB of the Act and all purchases and sales were recorded in the books of accounts too and when books of accounts were not rejected the Hon'ble Calcutta High Court in the case of Swadeshi Commercial Co. Ltd. vs CIT (ITA No. 219 of 2001 dated 18.12.2008) (Cal) held that gross profit cannot be estimated. In the instant case, the ld. AO has not pointed out or any discrepancy in the books of accounts filed by the assessee and the assessing officer has no evidence to come to a conclusion that the assessee has undisclosed profit. The entire addition was made surmises and conjectures. Even otherwise we find that the assessee has

explained the issue with facts and figures, under these facts and circumstances, the addition made by the assessing officer as sustained by the ld. CIT(A) is bad in law. In view of the discussions made above, we delete the addition made by the ld. AO and set aside the order passed by the ld. CIT(A) by allowing the appeal filed by the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.03.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 15.03.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- The Cheers, 403/3A, Mahatma Gandhi Road, Kewrapukur – 700082. W.B.
2. Respondent – ACIT, Circle-26(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata