

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 249/GAU/2018
Assessment Year: 2015-2016**

***Shri Sanjibar Rahman,..... Appellant
West Ramnagar, A.K. Road,
Agartala-799002
[PAN:ADPPR3070B]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3, Agartala-799001***

Appearances by:

No n e, appeared on behalf of the assessee

Shri N.T. Sherpa, JCIT, appeared on behalf of the Revenue

Date of concluding the hearing : January 31, 2023

Date of pronouncing the order : March 30, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Principal Commissioner of Income Tax (Appeals), Shillong dated 24.07.2018 passed for A.Y. 2015-16.

2. In response to the notice of hearing, an adjournment application was filed by the assessee on the ground that he has met an accident few days ago and his leg is injured seriously, therefore, further time be given. However, we find that repeated

adjournments are being shown by the assessee on more than 15 occasions, therefore, we did not deem it appropriate to grant an adjournment and proceed to decide the appeal *ex-parte*.

3. The assessee has taken seven grounds of appeal alongwith sub-grounds therein, but his grievances revolve around three issues and we take them in seriatim.

4. The first grievance is that the Id. Assessing Officer has made an addition of Rs.24,94,221/-, which has been confirmed by the Id. CIT(Appeals). The finding recorded by the Id. CIT(Appeals) on this issue is as under:-

“Ground No.1

This ground is against addition of Rs.24,94,221/-.

4.1. In course of assessment proceedings, the AO found out that assessee was having undisclosed bank account as under:

- (i) *Axis Bank Agartala A/C NO. xxxx 03863*
- (ii) *Axis Bank Agartala 13305*
- (iii) *Tripura State Co-op Bank Ltd. 00530*

When assessee was queried regarding the deposits in the said bank account, it was explained that the deposits were from sale proceeds of fish. It was argued that the whole of such sale proceeds should not be taxed. Against total deposit of Rs.3,98,68,655/-, Rs.6,03,762 was offered for tax. The AO was not convinced by explanation given to him. He deducted the contra entries from the deposits in those bank accounts. Net amount of Rs.3,11,77,632/- was treated by him as undisclosed business receipt. He took taxable profit @ 8% on the said undisclosed sales. It resulted into addition of undisclosed income amounting to Rs.24,94,221/-.

4.2. On the question of addition of Rs.24,94,221/-, assessee stated that the deposits in undisclosed bank accounts were sale proceeds of fish. The sums deposited in the bank accounts were remitted to the suppliers subsequently. It was stated that after consideration of contra entries, the assessee had correctly offered Rs. 6,03,762/- for taxation. The AO, without any basis, had estimated the profit at huge margin. The same should be deleted.

4.3. I have carefully considered the matter. Undisputed fact is that assessee was having substantial receipt from sale of fish. The sale proceeds were deposited in undisclosed bank a/c. Assessee offered a sum of Rs.6,03,762/- out of such sales. The offer of assessee has no basis. The AO had been lenient enough in taxing the probable profit from sales reflected in deposits in the undisclosed bank accounts. He had taken the profit @ 8% on the sales. I am of the considered view that 8% is a fair estimate of net taxable profit. Addition is confirmed. Ground No. 1 is dismissed”.

5. A perusal of the above finding would reveal that there was huge deposits of Rs.3,98,68,655/- in the Bank account of the assessee. The ld. Assessing Officer has treated the net amount as undisclosed business receipt at Rs.3,1177,632/-. On this amount, he estimated the profit at 8% and made an addition of Rs.24,94,221/-. The case of the assessee is that a perusal of this Bank account would reveal that all these amounts have been paid to the suppliers of the fish. In other words, he is working as a commission agent of fish market. The suppliers of the fish, i.e. fishermen used to supply him the fish, which were sold by him in the open market on their behalf. The sale proceeds of the fish were deposited in his account and thereafter payments were made to the fishermen. How the ld. Assessing Officer has estimated the profit at 8%, no basis is discernable either in the assessment order or in the first appellate authority order. The assessee himself has offered profit at Rs.6,03,762/-. The ld. Assessing Officer was of the view that this bank account was not

knowingly disclosed by the assessee and, therefore, a profit is to be estimated but while taking the profit at 8%, he has not referred any comparative case where an agent like assessee has disclosed the profit at 8%. The estimation of profit is always involved a guess work. It can never be accurate but there must be some material justifying the guess work of the adjudicating authority. We are also facing the same problem because before us also, there is no detail. However, to some extent, the uniform rate of 8% available in Section 44AD applicable on some contractor is not to be applied on every time on every type of business. Therefore, we direct the ld. Assessing Officer to take an estimated income at 4% and credit of income disclosed by the assessee is to be given of Rs.6,03,762/-. In other words, at 4%, the total addition will be Rs.12,47,110/- out of this Rs.6,03,762/- is to be further reduced [Rs.24,94,221/2 =Rs.12,47,110/- minus Rs.6,03,762/-] =Rs.6,43,348/-. A net addition of Rs.6,43,348/- is retained in place of Rs.24,94,221/-.

6. In the next fold of grievance, the assessee has pleaded that the ld. CIT(Appeals) has erred in confirming the addition of Rs.60,000/-.

7. The facts regarding this issue are observed by the ld. CIT(Appeals) are as under:-

"Ground No.2

The ground is against addition of Rs.60,000/-.

5.1. According to the AO, contract receipt of assessee was Rs.75,25,097/- per 26AS- However, contract receipt shown in return was Rs.70,25,097/- only. Before the AO, initially, it was stated that the undisclosed contract receipt may be taxed at G.P. rate disclosed in the return. Subsequently, it was stated that undisclosed contract receipt was shown as part of receipt from business of purchase and sale of fish. AO rejected the claim of assessee. He found out that G.P. of disclosed contract receipt was @10.99%. He took the G.P. @ 12%. It led to addition of Rs.60,000/-.

5.2. In appeal, it was stated that the return was filed on basis of facts available while preparing the said return. All payments of contract receipts were received in the bank and the particular sum of Rs.5,00,000/- was not deposited in the bank accounts of assessee. It was stated that there was no evidence of the sum being received by the assessee during the year.

5.3. I have carefully considered the matter. Assessee's contention that the sum was not deposited in the bank a/c at the time of filing return and income cannot be assessed during the year is unacceptable. Per 26 AS, contract receipt during the year was Rs.75,37,576/-. Assessee maintained its a/c on mercantile basis. If payment was due to him, the same has to be included in his income. The ground taken is therefore rejected”.

8. With the assistance of ld. D.R., we have gone through the record. It is pertinent to observe that submission of the assessee is that as far as the different of Rs.5,00,000/- is concerned, it never came to his bank account, therefore, it was not recognized as a gross receipt on which profit is to be worked out. The revenue authority failed to find out any fault in this submission. They simply rejected. It is to be demonstrated from the details that the assessee has received the complete money and failed to offer income of the differential amount. Therefore, this fold of

ground of appeal is allowed and the addition of Rs.60,000/- is deleted.

9. In the next fold of contention, the grievance of the assessee is that the Id. CIT(Appeals) has erred in confirming the addition of Rs.3,529/-. According to the Id. Assessing Officer, the assessee earned commission income of Rs.12,479/- but disclosed only a sum of Rs.8,950/- in the return. The balance was not offered, hence, it is added. The Id. Assessing Officer has not brought any facts of the records. He has simply observed like this, the assessee has submitted that nothing such type of facts are reflected in TDS statement filed under section 226AS by the prayer. Therefore, there is no basis to make this addition, it is deleted.

10. Under other grounds, the assessee has challenged levy of interest under sections 234A, 234B & 234C. It is consequential in nature.

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

Order pronounced in the open Court on 30.03.2023.

Sd/-	Sd/-
(Manish Borad)	(Rajpal Yadav)
Accountant Member	Vice-President
Kolkata, the 30th day of March, 2023	

Copies to :(1) **Shri Sanjibar Rahman,**
West Ramnagar, A.K. Road,
Agartala-799002

(2) **Income Tax Officer,**
Ward-3, Agartala-799001

(3) *Commissioner of Income Tax (Appeals),*
Shillong,

(4) *Commissioner of Income Tax- ,*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.