

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.5196/Del/2017  
Assessment Year: 2013-14

Mohd. Mehfooz, S/o Hazi Musha, Prop. Muntzeer & Company Idgah Road, Mohhalla Qureshiyan, Gangoh, Saharanpur <b>PAN APAPM 6155 M</b>	vs.	ITO, Ward-3(2), Saharanpur
(Appellant)		(Respondent)

For Assessee :	Shri Piyush Kumar Kamal, Adv.
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	31.03.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal filed by the assessee is directed against the order dated 09.03.2017 of the Ld. CIT, Muzaffarnagar, relating to Assessment Year 2013-14.

**Grounds No. 1 to 4 of assessee**

2. Apropos these grounds of appeal the learned counsel of the assessee submitted that the learned first appellate authority has erred in confirming the rejection of books of accounts u/s. 145(3) of the I.T Act 1961 (hereinafter for short the Act) and ignoring very vital facts that the books of accounts of assessee were duly audited u/s. 144AB of the Act, and proper audit report has already been submitted before the lower authorities during the assessment proceedings. The learned counsel vehemently pointed out that Ld. CIT(A) has also erred in applying GP rate at the rate of 3% while it was applied by the AO at the rate of 2.75% during the course of assessment proceedings against the GP rate of 2.67% declared by the assessee. The learned AR submitted that the action of the authorities below is wrong, illegal, misconceived, unjustified and bad in law therefore it should be quashed. The learned AR also submitted that the Ld. CIT(A) has over looked a very relevant fact that the turnover of Mohd. Nadeem was only 8.43 crore while the turnover of applicant was much higher of Rs. 49.96 crore therefore

both are not comparable for the purpose of estimation of GP rate. Therefore addition made by the AO and upheld by the Ld. CIT(A) on account of rejection of books of account and estimation of GP rate at the rate of 3% is not correct and sustainable.

3. Replying to the above the learned Senior DR strongly supported the orders of the authorities below and submitted that the Ld. CIT(A) has granted substantial relief to the assessee therefore no interference is called for.

4. On careful consideration of above submissions first of all from the first appellate order I observed that the Ld. CIT(A) has upheld the action of the AO rejecting books of accounts of assessee u/s. 145(3) of the Act and estimating GP rate at the rate of 3% with following observations and findings:-

*8. The facts of the case as well as submission made by the appellant have been considered. In this case the appellant is engaged in trading of livestock of buffaloes, meat and raw hides. He has shown turnover of Rs.499633506/- with gross profit of 2.66%. During the assessment proceedings books of account have been produced before the AO it was found that in respect of purchases there were no bills/vouchers. Therefore, the books of account were rejected us 145(3) of the Act and gross profit was estimated @ 2.75%. The AO has further*

*disallowed expenses debited to the profit & loss account @, 15% on estimate basis as no vouchers for the same were produced.*

*During appellate proceedings the AR made available the list of comparative cases in the same trade and stated that in the comparative cases gross profit of the appellant is highest at 2.67%. However, the AR made no submission on the rejection of books of account. No vouchers were produced for purchases and other expenses in their support.*

*On consideration of facts of the case and submission of the appellant, it has been noted that the appellant did not produce bills/vouchers in support of books of account maintained. Therefore the AO was justified in rejecting the same u/s 145(3) of the Act as the same were not found complete. Further it is gathered that in a similar case of Mohd. Nadeem, Prop. Nadeem & sons, Mohalla Ghulam Auliya, Gangoh Distt. Saharanpur gross profit of 3.78% has been shown on turnover of Rs.8.43 crore for AY 2012-13. The appellant has shown turnover of Rs.49.96 crore. It is a general business practice that for higher turnovers, gross profit declines. Therefore, in view of the facts of the case and non-verifiability of the purchases and other expenses, it would be fair and reasonable to estimate the gross profit in this case @ 3% as against 2.66% shown by the appellant. The Appellant has been confronted on this aspect vide letter dated 21.02.17. Accordingly the addition on this account is worked out to Rs.1698754/-. However, once books of account have been rejected, the AO was not justified to make separate addition on account of expenses debited to the profit & loss account for non-production of vouchers. Under the facts, the overall addition on these accounts from grounds of appeal Nos.2 to 8 is confirmed to the extent of Rs. 1698754/- and the balance amount is hereby deleted. Grounds of appeal Nos.2 to 8 are partly allowed.*

5. In view of above on careful consideration of rival submissions and relevant operative part of assessment and first appellate order as has been reproduced hereinabove, I am of the view that the assessee did not produce bills/vouchers in support of books of accounts maintained and this fact has not been controverted by the learned counsel of the assessee. As per provision of section 145(3) of the Act, the AO is entitled to reject books of accounts of assessee, where the Assessing Officer is not satisfied about the correctness and completeness of the accounts of assessee of where the method of accounting provided in sub section 1 has not been regularly followed by the assessee or income has not been computed in accordance with the standard notified under sub section 2 then the Assessing Officer is empowered to reject the books of accounts and to proceed for estimation of income. Merely because the assessee has submitted audit report does not substantiate the fact that the claim of expenses made by the assessee in his books of accounts is correct and sacrosanct the assessee is duty bound to comply with the directions of the AO by submitting not only books of accounts but all supportive documentary evidences like bills/vouchers etc. to

support the claim of expenses and other claims recorded in the books of accounts. In the present case the assessee has claimed huge expenses and the AO wanted to verify the correctness of the figures and facts noted therein but in absence of relevant documentary evidence like bills/vouchers etc. the AO could not examine and verify the correctness of the claim of assessee recorded in the books of accounts of the assessee. Therefore the AO was right in rejecting books of accounts of assessee as the books of accounts of assessee were not sufficient to establish the correctness or completeness of the accounts of assessee in absence of relevant documentary evidences therefore the Ld. CIT(A) was right in upholding the action of the AO in rejecting books of accounts of assessee.

6. So far as estimation of GP rate is concerned the Ld. CIT(A) has considered relevant comparables including profit declared by Mohd. Nadeem which was GP rate of 3.78% and the Ld. CIT(A) keeping in view the turnover of both the entities estimated the GP at the rate of 3% in listed of 3.78% and this action of the Ld. CIT(A) cannot be alleged as arbitrary and unsustainable in view of various

proposition on the issue of estimation of GP rate. Therefore I unable to see any ambiguity perversity or any other valid reason to interfere with the findings recorded by the Ld. CIT(A) therefore I uphold the same. Accordingly grounds no. 1 to 4 are dismissed.

**Grounds No. 5 to 7 of assessee**

7. The learned counsel of the assessee submitted that the identity, genuineness and creditworthiness of the depositor Mr. Mohd. Ayyub (father of assessee) and Mohd. Rakib (brother of assessee) was duly established by submitting all relevant documentary evidences under command of the assessee and despite said documentary evidences the AO disputed the amount of unsecured loans of Rs. 6,99,000/- from his father Shri Mohd. Ayyub and Rs. 2,99,000/- from his brother Mohd. Rakib. The learned counsel vehemently pointed out that there was sufficient cash balance in the hands of said creditors from whom the assessee received said amount of unsecured loan during the relevant period but the authorities below disbelieve the factum of availability of cash with these creditors therefore the addition made by the AO and uphold by the Ld. CIT(A) may kindly be directed to be deleted.

8. Replying to the above the learned Senior DR supported the order of the authorities below and submitted that the bank accounts of both the creditors clearly shows that there was cash deposit of Rs. 7 lac and 3 lac respectively in the bank accounts of Shri Mohd. Ayyub and Shri Mohd. Rakib immediately before the transfer of funds to the assessee's bank account therefore the authorities below were right in making and upholding addition in the hands of assessee.

9. On careful consideration of above submissions and order of the authorities below. I found that the Ld. CIT(A) has dismissed grounds of assessee upholding the action of the AO with following observations and findings:-

*10. The facts of the case as well as submission made by the appellant have been considered. The AO has made the above additions as the depositors have deposited the equivalent amounts of cash in their bank accounts before issuing the cheques in favour of the appellant for giving loans for Rs.699000/- and Rs.299000/- respectively. They explained the source of cash out of their past savings. However, nothing was brought on record before the AO to support their statements. During appellate proceedings, it has been stated by the AR that Sh. Mohd. Ayyub is a regular income tax payee and cash turnover of Rs.26 lac whereas Sh. Mohd. Rakib is also regular income tax payee showing cash turnover of Rs.22 lac.*

*On consideration of facts it is noted that the appellant could not substantiate the creditworthiness in respect of loans taken from Sh. Mohd. Ayyub and Sh. Mohd. Rakib. They are earning in the range of Rs.2 lac per year and after meeting their household expenses, they are left with meagre savings. Therefore, in these facts their creditworthiness is not established. The onus was on the appellant to explain the sums found credited in his books of account during the year as required us 68 of the Act which he has failed to discharge. Under the circumstances, it is held that the AO was justified to make additions of Rs.6,99,000/- and Rs.2,99,000/- respectively. The same are hereby confirmed. Grounds of appeal Nos.9 & 11 are dismissed.*

10. In the totality of facts and circumstances of the case and thoughtful consideration of rival submissions and findings recorded by the authorities below. I am of the view that it was the stand of the assessee that the amount of cash deposited by the creditor was out of cash available with them which was collected through their past savings. The AO as well as Ld. CIT(A) also considered the turnover and earning of both the creditors and thereafter this believing the explanation of assessee uphold the addition. The Ld. CIT(A) after considering the factual matrix of the issue rightly concluded that the creditors are earning income of Rs. 2 lac per year and after meeting their household expenses they left with meagre savings. I clearly note that the identity of creditors was

established but their capacity and creditworthiness of advancing loan of Rs. 6,99,000/- and 2,99,000/- was rightly disbelieved by the AO as well as Ld. CIT(A). The assessee failed to discharge onus lay on his shoulders as per requirement of section 68 of the Act, and therefore the AO was right in making addition in the hands of assessee and Ld. CIT(A) was also correct and justified in upholding the same. Accordingly grounds no. 5 to 7 of assessee being devoid on merits are also dismissed.

11. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 31.03.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 31<sup>st</sup> March, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

*// By Order //*

Asstt. Registrar, ITAT, New Delhi