

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**(Conducted through E-Court, Rajkot)**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 217/Rjt/2019  
निर्धारण वर्ष/Asstt. Year: 2016-2017

Shri Jitendra Chandulal Aswani, Prop. of Krishna Enterprise, Shop No.D-5, Marketing Yard, Bhavnagar Road, Rajkot.  <b>PAN: AFHPA3575Q</b>	Vs.	The Income-tax Officer, Ward-2(1)(2), Rajkot.
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Assessee by :	Shri D.M. Rindani, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **19/01/2023**  
घोषणा की तारीख /**Date of Pronouncement**: **17/04/2023**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Rajkot, dated 30/07/2019 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

*1. The Learned Commissioner of Income-tax (Appeals)-2, Rajkot erred in upholding rejection of books of accounts by the A.O u/s.145(3) of the Act and in not considering revised books of accounts and computation of income furnished during assessment.*

*2. The learned Commissioner of Income-tax (Appeals)-2, Rajkot erred in rejecting plea for admission of addition evidence filed by the appellant during appellate proceedings.*

*3. The Learned Commissioner of Income-tax(Appeals)-2, Rajkot erred in confirming action of the assessing officer in estimating the profit @ 8% on aggregate credit entries in bank deposits and thereby making addition of Rs.26,45,306/-*

*4. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.*

3. At the outset, the Ld. AR appearing on behalf of the assessee submitted that he has been instructed by the assessee not to press ground No. 1 raised in the memo of appeal. Accordingly, we dismissed the same as not pressed.

4. The next interconnected issue raised by the assessee is that the Ld. CIT(A) erred in confirming the order of the AO by estimating profit at the rate of 8% on all the bank deposits after admitting the additional evidence.

5. Briefly stated facts are that the assessee in the present case is an individual and engaged in the wholesale business of grains/pulses under his proprietary concern namely "Krishna Enterprise". The assessee has filed his return of income declaring an income of Rs. 3,62,032/- vide ITR dated 25/03/2017. The AO during the assessment proceedings found that there were credit entries reflected in the HDFC bank amounting to Rs. 2,40,59,769/- only which were not recorded in the books of accounts. Accordingly, the AO rejected books of accounts of the assessee and estimated profit on all the credit entries shown by the assessee in his all the bank accounts at the rate of 8% and worked out the profit at Rs. 26,45,306/- only.

6. Aggrieved assessee preferred an appeal to the Ld.CIT(A). The assessee before the Ld.CIT(A), filed the additional evidence of the comparable cases to demonstrate that the profit in the line of his business ranges from 1 to 1.5% only. Accordingly, the assessee computed the profit at Rs. 5,26,101/- after including

undisclosed bank account entries. However, the Ld.CIT(A), disregarded the contention of the assessee by observing as under:

*During appellate proceedings, the assessee has sought admittance of new ) evidence u/r 46A which is audit report of M/s Nilesh Kumar Prabhudas, proprietor, as a comparable case for estimating the profit in the said line / of business.*

*Having considered facts and circumstances of the case I do not find the additional evidences to be admissible. The Assessing Officer has provided enough opportunity to the assessee during assessment proceeding and none of the conditions laid down in rule 46A are satisfied to merit admittance of these evidences.*

*The assessee has contended that estimation of profit at 8% at total turnover is not justified. It is contended that the assessee was dealing in wholesale trading of grains and finance related transaction were carried out through DEIMA bank and HDFC bank. It is contended that semi whole trading business in pulses was backed by sales and purchase and sale related document. It is reiterated that the accounts of the assessee were prepared casually by the accountant and business and financial transaction reflected in DENA bank and HDFC bank were not properly evaluated by accountant and that transaction in HDFC bank were ignored and were not reflected in books and that the assessee was not aware of incorrectness of the book prepared by the part time accountant. It is contended that during assessment proceedings when the irregularities came into light, the books of accounts were recast. The assessee computed profit of Rs.5,26,101/-. It was contended that in this line of business the profit rate ranged from 1 to 1.5% only. The assessee has cited various case laws in support of the contentions that revised computation of the profit and loss account should be accepted.*

*Having considered facts and circumstances of the case I find that the assessee himself has declared net profit of 8% on sale of Rs.45,52,252/-. It is not the case of assessee that the transactions on which net profit of 8% has been declared by assessee are different from the ones in respect of which Assessing Officer has estimated the profit at 8%. The contentions of assessee that he did not declare correct turnover and the correct profit by mistake cannot be accepted as genuine. The assessee was under obligation to file correct return of income particularly when assessee has verified that information given in the return of income and schedule thereto is correct and complete. Not declaring correct profit cannot be attributed merely to the accountant's failure. It is seen that the difference in sales and purchase is quite large as the undisclosed sales and purchase are more than 8 times the declared sales and purchases.*

*In these facts and circumstances of the case I find no infirmity in invoking the provision of section of 145(3) by the Assessing Officer and rejecting the book result.*

*So as far as quantum of the estimation of profit is concerned, in my considered opinion the Assessing Officer has been quite reasonable and fair in holding that the credit entries in the two bank account pertains to business transaction and has merely estimated the net profit of these transactions taking guidance from section 44AD. It is also noteworthy that the assessee himself has declared the profit of 8% on part turnover declared in the return of income. The profit estimated by Assessing Officer is therefore not only commensurate with the rate prescribed in section 44AD it is also equal to the net profit declared by the assessee himself. Therefore, the profit estimated by Assessing Officer is quite reasonable and it is not exorbitant in the given facts and circumstances of the case. The action of Assessing Officer therefore calls for no interference. The grounds of appeal are rejected.*

7. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us contended that the income of the assessee cannot be computed under the provision of section 44AD of the Act. As per the Ld. AR, the provisions of section 44AD of the Act are applicable where the turnover of the assessee does not exceed the specified limit. Furthermore, the provisions of section 44AD of the Act are applicable in the case of retail business whereas the assessee is engaged in the wholesale business.

8.1 The Ld. AR further submitted that once the books of accounts got rejected then, the only option available to the AO is to estimate profit but in a scientific manner. As such, the AO is expected to find comparable cases to justify the profit to be estimated after rejecting the books of accounts but the AO without bringing any comparable cases has worked out the profit in the manner provided u/s 44AD of the Act. The Ld. AR before us has also produced the necessary document of the comparable case being M/s Nileshkumar Prabudas who was also engaged in the business of grains/pulses and has disclosed net profit ratio at the rate of 1.75 percent whereas the assessee has shown net profit at 1.58 percent which is close to the comparable case.

9. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the books of accounts of the assessee were rejected by the authorities below but the same has not been challenged before us as the assessee has withdrawn relevant ground of appeal raised in the memo of appeal. Thus, the issue before us revolves around what should be the rate of profit to be adopted for working out taxable income of the assessee. In the present case the AO has adopted 8% of the total deposits in the

bank account to determine the taxable income of the assessee after referring to the provision of section 44AD of the Act. In this regard, we note that the provisions of section 44AD have been brought under the statute to provide incentive to the small businessmen who are engaged in the retail business and turnover of such business does not exceed beyond the limit. But such provisions could not be applied to the assessee who does not fulfill the conditions provided u/s 44AD of the Act. In the present case admittedly, the turnover of the assessee exceeds the specified limit, and the assessee is also not engaged in the retail business. Thus, we are of the view that the determination of the profit of the assessee could not be guided by the provisions of section 44AD of the Act, in the given fact and circumstances.

10.1 Controversy arises, then how the profit of the assessee should be estimated after rejection of the books of accounts. It is the trite law that the income cannot be based on wild guess, rather it should be based on some materials available on hand relating to the assessee which should be considered and that too after providing the opportunity of being heard to the assessee as well as considering the provisions of the Act and Rules of Income Tax Rules. After rejecting book results, the Assessing Officer has to determine the income in reasonable and scientific manner after considering the results/ performance of the earlier years or some comparable cases. In holding so we refer the judgment of co-ordinate bench of Jodhpur Tribunal in case of *Sriram Jhanwarlal v. ITO* [2005] 98 TTJ (Jodh.) 639. The relevant observation is extracted as under:

*After rejecting the book results, the AO does not get unfettered powers to make assessment at any income. He is supposed to be guided either by the previous results of the assessee or some comparable cases. In the instant case, the AO has allowed deduction of direct expenses at 75 per cent of the gross receipts without any cogent material. His ad hoc estimate of expenses divorced from the relevant facts cannot be upheld.*

10.2 The Hon'ble Gujarat High Court in case of Kiran industries Pvt Ltd Tax Appeal No. 449 of 2011 has held as under:

*Having perused the documents on record with the assistance of the learned counsel for the revenue, we notice that the Tribunal had though confirmed the view of the*

*revenue authorities with respect to the rejection of the books of accounts of the assessee did not accept the re-computation of higher rate of gross profit on the premise that the average gross profit rate of last three years immediately preceding the year under consideration came to 14.79%. On such basis, the Tribunal found that the claim of gross profit rate @ 15.27% cannot be stated to be low. On such basis, the assessee's appeal was allowed.*

*We are of the opinion that the findings of the Tribunal are based on evidence on record and are purely factual in nature. The Tribunal after taking into account relevant materials, came to the conclusion that a certain rate of gross profit presented by the assessee was acceptable.*

10.3 However, we note that none of the authorities below has referred to the rate of the profit declared by the assessee in his return of income in the earlier years nor had the Ld. AR brought such information to our notice. What we find is that the Ld. AR has brought the comparable case which is supported by the Audit Financial statement placed at page 78 to 94 of the paper book where the net profit at the rate of 1.75 percent was declared. Accordingly, we are of the view that such comparable case can be adopted as yardstick to determine the profit of the assessee after rejecting the books of accounts.

10.4 Nevertheless, we note that the Ld. AR at the time of hearing has offered net profit at the rate of 4% of the total deposits made in the bank. Accordingly, we set aside the findings of the Ld. CIT(A) and direct the AO to restrict the addition at the rate of 4% of the total bank deposits determined by the authorities below. Hence, the ground of appeal of the assessee is partly allowed.

11. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the Court on 17/04/2023 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 17/04/2023  
*Manish/Tanmay*

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**True Copy**

**आदेश की प्रतिलिपि प्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad