

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.15/RPR/2018
(Assessment Years: 2014-2015)

Shri Pratap Nayak, Prop. Preeti Enterprises Shop No.172, Dhillon Complex, Akash Ganga, Supela, Bhilai (CG)	Vs	ITO-1(3), Bhilai
PAN No. :ADJPN 0557 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri R.B.Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri Piyush Tripathi, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	11/04/2023
घोषणा की तारीख/ Date of Pronouncement	:	24/04/2023

आदेश / O R D E R

Per Arun Khodpia, AM :

The assessee has filed this appeal against the order passed by the CIT(A)-II, Raipur, dated 06.12.2017 for the assessment year 2014-2015, on the following grounds :-

1. *Ld. CIT(A) was not justified in upholding the action of the AO in rejecting the book results and in estimating the gross profit from trading business at 3.5% of gross turnover. Ld. CIT(A) erred in confirming the estimation of gross profit at Rs. 30,86,856/- made by the AO in place of returned gross loss of Rs. 21,21,260/-. The addition made by AO and confirmed by CIT(A) is not justified, and is arbitrary, baseless.*
2. *The appellant reserves the right to add, amend or alter any ground/s of appeal.*

2. Brief facts of the case are that the assessee is engaged in the business of purchase and sales of mobiles and mobile charge coupon of Idea Cellular limited. During the year under reference the appellant had shown gross turnover to the tune of Rs. 8,81,95,901/- which comprised of sales of recharge vouchers of Rs. 8,01,35,791/- and sale of mobile handsets at Rs. 80,60,110/-. The assessee had also credited commission and other income in the Profit and loss account at Rs. 34,94,314/-. It was noticed by the AO that during the year under reference the appellant suffered losses on trading of recharge and mobile sets at Rs. 24,78,183/-.

However, in the immediately preceding years the assessee has shown gross profit @ 3.37% and 3.14% for the AY 2013-14 and 2012-13 respectively. The AO worked out the gross profit with reference to the earlier years as no details was submitted by the assessee during the assessment proceedings. Accordingly, the AO rejected the books of accounts of the assessee and estimated the profit on trading business @ 3.5% on the gross turnover which comes at Rs. 30,86,856/- on turnover of Rs. 8,81,95,901/-.

3. Against the above order of AO, the assessee preferred appeal before the Id. CIT(A), but without success, the Id. CIT(A) upheld the findings of the AO and dismissed the appeal of the assessee.

4. Now, the assessee is in further appeal before the Tribunal against the order of the Id.CIT(A).

5. Ld. AR before us submitted that the revenue authorities have grossly erred in appreciating the facts of the case, they mixed the two business activities (1) sale of e-recharge mobile vouchers and (2) sale of Mobile phones of the assessee and concluded, the assessment as well appellate proceedings by applying a single rate of Gross profit % on both the activities. Ld AR further submitted that while recasting Trading and Profit & Loss Account of the assessee for the AY 2014-15 during the assessment proceedings, Ld AO has taken the opening stock of Mobile Recharge Vouchers as that of Mobile phones, commission Income is also wrongly taken as part of P&L instead of trading account and therefore has arrived at a misleading conclusion that the GP of both the activities should be 3.50 %. It was further submitted that Gross Profit % of the Mobile E-Recharge voucher for the earlier assessment years were 3.37% and 3.14% only after considering income from Commission and other income, thus applying a higher percentage of GP - 3.50% after considering income from Commission and other income is uncalled for, unjustified and bad estimation by the Ld AO. Ld AR in order to substantiate the facts have produced a statement showing Trading and Profit & Loss of the assessee for the AY 2014-15, combined as well as only for Mobile E-Recharge

Vouchers (excluding business if Mobile Handset), same is extracted here under for better perusal of the facts:-

Pratap Nayak
Trading and Profit & Loss A/c (Combined)

Particular	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2012-13	Particular	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2012-13
	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)		Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
To Opening Stock of E-Recharge Voucher	18,71,292	22,80,466	16,16,530	By Sale of E-Recharge Voucher	8,01,35,791	9,37,67,508	6,38,14,069
To Purchase of E-Recharge Voucher	8,13,31,144	9,23,81,783	6,38,19,825	By Sale of Mobile handset	80,60,110	-	-
To Purchase of Mobile handset	93,42,940	-	-	By Commission & other income	34,94,314	22,59,807	13,90,907
To Gross Profit:	13,73,054	32,36,358	20,49,087	By Closing Stock of E-Recharge Vouchers	9,45,385	18,71,292	22,80,466
			3.45%	By Closing Stock of Mobile handset	12,82,830	-	-
Total	9,39,18,430	9,78,98,607	6,74,85,442	Total	9,39,18,430	9,78,98,607	6,74,85,442
To General Administrative Expenditure	7,40,239	20,65,718	11,30,996	By Gross Profit	13,73,054	32,36,358	20,49,087
To Depreciation	36,807	57,180	27,222				
To Bank Commission & Finance Charges	-	1,542	1,60,724				
To Bank Interest	-	29,273	-				
To Net Profit	5,96,008	10,82,645	7,30,145				
Total	13,73,054	32,36,358		Total	13,73,054	32,36,358	20,49,087

Trading and Profit & Loss A/c (excluding business of Mobile Handset)

Particular	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2012-13	Particular	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2012-13
	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)		Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
To Opening Stock of E-Recharge Voucher	18,71,292	22,80,466	16,16,530	By Sale of E-Recharge Voucher	8,01,35,791	9,37,67,508	6,38,14,069
To Purchase of E-Recharge Voucher	8,13,31,144	9,23,81,783	6,38,19,825	By Commission & other income	34,94,314	22,59,807	13,90,907
To Gross Profit:	13,73,054	32,36,358	20,49,087	By Closing Stock of E-Recharge Vouchers	9,45,385	18,71,292	22,80,466
			3.37%				
Total	8,45,75,490	9,78,98,607	6,74,85,442	Total	8,45,75,490	9,78,98,607	6,74,85,442
To General Administrative Expenditure	7,40,239	20,65,718	11,30,996	By Gross Profit	13,73,054	32,36,358	20,49,087
To Depreciation	36,807	57,180	27,222				
To Bank Commission & Finance Charges	-	1,542	1,60,724				
To Bank Interest	-	29,273	-				
To Net Profit	5,96,008	10,82,645	7,30,145				
Total	13,73,054	32,36,358		Total	13,73,054	32,36,358	20,49,087

6. It was the further submission of the Ld AR that the assessee has launched the business of selling of mobile phone in the AY 2014-15 only and was unable to make any profits from this business due to launching of android smart phones and therefor the assessee has stopped dealing in business of selling of mobile phone after the impugned assessment. According to Ld AR, Ld CIT(A) has decided the issue in haste without considering the submissions of the assessee, even the admission of the Ld AO in the remand report that the opening stock of Mobile recharge vouchers was wrongly shown as opening stock of mobile phone in the assessment proceedings was taken on record but have not given any weightage in the appellate order. Ld AR further drew our attention to the order of LD CIT(A) para 6. wherein it was noted by the Ld CIT(A) that the AO vide his remand report has made a comparison with M/s Semi Conductor, who is in the same line of business and has disclosed a gross profit rate of 2.88%, no effect of this finding to the benefit of the assessee was given by the Ld CIT(A), but the rate of GP% applied by the Ld AO of 3.50% was concurred with by the Ld CIT(A) and upheld the order of Ld AO. It was also submitted by the Ld AR that the rate of comparative GP of M/s Semi Conductor cannot be applied in the case of assessee because M/s Semi Conductor is a retailed whereas the assessee was in whole sale trade of the mobile phone. Ld AR for the reasons mentioned herein above has submitted that the order of Ld CIT(A) upholding the order of Ld AO was not justified, arbitrary and baseless.

7. On the other hand, Id. Sr. DR vehemently relied on the orders of the authorities below.

8. We have considered the rival contentions and perused the relevant material on record. Admittedly, Ld AO had committed certain mistakes in recasting the Trading and Profit & Loss Account while passing the assessment order, however it was also the fact that the assessee was a persistent non-compliant during the assessment proceedings. At the stage of first appeal before the CIT(A), assessee through submissions and representation by AR's which were further enlightened by Ld AO by

submitting a remand report were not appreciated properly by the Ld CIT(A). In view of aforesaid facts and circumstances of the case, we are of the considered opinion that 3.25% Gross profit percentage (on sale of mobile recharge vouchers including commission & other income) i.e. average of 3.37% and 3.14% respectively for previous 2 assessment years 2013-14 and 2012-13, will be the right percentage to be adopted for AY 2014-15 and we order to do so.

9. With regard to sale of mobile phones, being the first and only year of the business in this line by assessee as submitted by the assessee and not controverted by the revenue, since there is no factual precedence to arrive at a reasonable GP%, was available for our adjudication, the comparative 2.88% of M/s Semi Conductor as provided by Ld AO in his remand report after a reasonable concession on account of assessee's business as a whole seller and that the comparative was of a retailer, we are of the view and deem it reasonable that assessee's Gross profit from sell of mobile phone shall be taken at 2% and assessed accordingly.

10. In backdrop of the aforesaid observations, we set aside the order of the Id. CIT(A) and direct the Ld AO to recalculate the taxable income of the assessee in terms of our observations herein above. Accordingly ground of appeal raised by the assessee in the instant appeal are partly allowed for statistical purposes.

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

Order pronounced in the court on 24/04/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 24/04/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur