

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं

डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

**Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 1178/KOL/2019
Assessment Year: 2007-08**

***Arun Kumar Jaiswal.....Appellant
[PAN: AFNPJ 8042 H]***

Vs.

ITO, Ward-2(1), Asansol.....Respondent

Appearances by:

Sh. D.K. De Sarkar, FCA, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : May 1st, 2023

Date of pronouncing the order : May 12th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2007-08 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), Asansol [in

short Id. "CIT(A)"] dated 26.02.2019 arising out of the assessment order framed u/s 143(3)/144A of the Act dated 23.12.2009.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That on the facts and circumstances of the case the order of the Ld. Assessing Officer in bad in Law.

2. That the Ld Assessing officer wrongly added Rs1234580/- as difference in gross profit on estimated. basis without any basis or in cooperation with other same nature of business. So addition made by the Ld Income Tax officer may please be deleted.

3. That the Ld. Assessing officer has added Rs. 7002523/-as bulk agency bonus, where no such bonus actually received by the assessee. So addition may please be deleted.

4. That the Ld. Assessing officer has added Rs 423612/- on the grounds that the cash payment has been made by your assessee in excess of Rs 20000/- by invoking section 40A(3) read with Rule -6DD. But the Id. ITO has failed to bring any records which prove transaction made between the assessee and the party to whom payment was made is not genuine. So in this case fact is that there is no dispute that the cash payments were made to the suppliers by your assessee. And due to urgent business expediency sometimes it is require making payment by cash. It is also established by the Honhle ITAT, Kolkata :B: Bench, in ITA No. 541 (KOL) of 2001 vide its order dated 28-06-2004 in the case of Britannia Industries Ltd. Vs JCIT for the A.Y 1997-98 in which on similar facts the addition made u/s 40A(3) was deleted by holding that cash payment was made for business expediency in view of the aforesaid premises it is prayed that your Honour may be pleased to delete the additions made in the assessment order u/s. 143(3) of the Income Tax Act, 1961 passed by the Id. Assessing Officer in abundant disposition of justice in consonance with law.

5. That further grounds may be adduced at the rime of hearing of the appeal."

3. We have heard rival contentions and perused the records placed before us. The grievance of the assessee is solely with regard

to the addition sustained by ld. CIT(A) applying 1% gross profit rate as against 0.55% declared by the assessee. Facts in brief are that the assessee is an individual and is a sub-distributor of lottery tickets. Income of Rs. 1,04,900/- declared in the return filed for AY 2007-08 on 01.11.2007. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. So far as the issue under appeal is concerned, we observe that the assessee has declared gross sales of Rs. 8,51,42,975/-. Gross profit rate of 0.55% declared in the financial statement. Against such gross profit in expenses have been claimed. Ld. AO called for the relevant documents including invoices and sales vouchers to verify the claim of the assessee of having shown 0.55% gross profit rate. The assessee was unable to satisfy ld. AO with the relevant details. Ld. AO accordingly concluded the assessment estimating gross profit at the rate of 2% of the total turnover and computed the income accordingly. When the matter travelled before ld. CIT(A), the assessee again failed to file the necessary details. Ld. CIT(A) also observed that the books of accounts contain certain lapses and errors as highlighted in the assessment order which the appellant could not controvert. He, however, partly allowed the grounds raised by the assessee applying the gross profit rate of 1% as against 2% made by ld. AO.

4. Before us, ld. Counsel for the assessee submitted that complete details have been filed and in this type of business, the gross profit margin is very low. In the written submission ld. Counsel for the assessee referred to the order of Settlement Commission bearing No. 1/11/16/95-96/IT pertaining to a

partnership firm for AY 1993-94 dealing in similar kind of lottery business and gross profit rate accepted therein was 0.27%.

5. We, further, notice that the assessee has made general submissions and for examining the facts of the case has neither filed the audited financial statement, purchase and ledger account, sample copies of purchase bills and sale bills for test check to examine the gross profit margin. Before both the lower authorities, the assessee could not satisfy, however, looking to the consistency of the business carried out by the assessee, we in the interest of justice and being fair to both the parties partly allow the sole issue raised by the assessee directing Id. AO to compute income by applying gross profit rate of 0.75% on the total turnover disclosed by the assessee. We further, would like to make it clear that our this finding of applying the gross profit rate of 0.75% on the lottery business carried out by the assessee as a distributor should not be taken as a precedence in other cases of similar nature. Thus, ground no. 2 raised by the assessee is partly allowed.

6. Ground nos. 1 & 3 are general in nature which needs no adjudication.

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

Kolkata, the 12th May, 2023

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 12.05.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Arun Kumar Jaiswal, C/o. D.K. De Sarkar & Co. 2nd Floor,
Room No. 27 & 28, 167/4, Lenin Sarani, Kolkata-700 072.**
- 2. ITO, Ward-2(1), Asansol.**
3. CIT(A), Asansol.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata