

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.136/RPR/2023

निर्धारण वर्ष / Assessment Year : 2019-20

Bharat Kotecha & Sons
9/403, Budhapara,
Raipur (C.G.)-492 001
PAN : AABHB7659F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-4(1),
Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.05.2023

घोषणा की तारीख / Date of Pronouncement : 30.05.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 31.03.2023, which in turn arises from the order passed by the A.O. under Sec. 143(3) r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 28.09.2021 for the assessment year 2019-20. The assessee has assailed the impugned order on the following grounds of appeal before me:

"1. Ld. CIT(A) erred in partially upholding estimation of net profit adopted by the AO, by bringing it down from 1% estimated by AO to 0.5%, without appreciating the fact that no such estimation could have been resorted to in absence of rejection of books of accounts. The addition made by AO and partially confirmed by CIT(A) is illegal and not justified.

2. Ld. CIT(A) erred in sustaining addition made by AO to the extent of Rs.5,61,695/- by estimating the net profits @ 0.5 % of the turnover in place of that disclosed in the books, without appreciating the facts of the case properly. The addition made by AO and sustained by Ld. CIT(A) is illegal, arbitrary, baseless and not justified.

3. The appellant reserves the right to amend, modify or add any of the ground/s of appeal."

2. Succinctly stated, the assessee-HUF which is engaged in the business of wholesale trading of tendu leaves for making beedi, had filed its return of income for A.Y.2019-20 on 25.10.2019, declaring an income of Rs.2,88,321/-

. Case of the assessee was, thereafter, selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of assessment proceedings, it was, inter alia, observed by the A.O that net profit of the assessee during the year under consideration had witnessed a decline as in comparison to the immediately two preceding years, as under:

A.Y.	Turnover	Gross total income	Gross profit	GP%	Net profit	NP%
2019-20	11,23,39,075	2,88,321	37,78,241	3.36%	2,88,314	0.26%
2018-19	3,16,31,339	5,52,614	34,87,773	11.03%	5,52,614	1.75%
2017-18	4,27,38,030	4,37,814	32,40,692	7.58%	4,38,351	1.03%

Observing, that while for turnover of the assessee concern had increased by around four times but its profit had declined by 85%, the A.O called upon it to put forth an explanation as regards the same. As the assessee failed to come forth with any explanation, therefore, the A.O adopted NP rate @ 1% and worked out a consequential addition of Rs.12,08,014/-. Accordingly, the A.O vide his order passed u/s. 143(3) r.w.s. 144B of the Act dated 28.09.2021 determined the income of the assessee at Rs.14,96,335/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). After deliberating at length on the contentions advanced by the

assessee, the CIT(Appeals) scaled down the addition made by the A.O by restricting the same to NP rate @ 0.5%. Accordingly, the CIT(Appeals) partly allowed the appeal of the assessee.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

7. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee had come forth with two-fold contentions, viz. (i) that the A.O had grossly erred in law in working out the impugned addition without rejecting the books of account of the assessee u/s.145(3) of the Act; (ii) that though the assessee on being called upon to put forth an explanation as regards the comparative decline in NP rate for the year under consideration had vide his letter dated 28.09.2021 demonstrated the reasons explaining the same but the A.O after brushing aside the same, had worked out the impugned ad-hoc addition in the hands of the assessee. The Ld. AR had taken me through the reply that was filed by the assessee with the A.O vide letter dated 28.09.2021, Page 34-36 of APB. On the basis of his aforesaid contention, it was averred by the Ld. AR that now when the A.O had wrongly assumed jurisdiction in

dislodging the duly audited books of account without rejecting the same and estimating its profit at an ad-hoc figure, therefore, the same was liable to be struck down on the said count itself. Alternatively, it was submitted by the Ld. AR that addition made by the A.O without considering the explanation of the assessee as regards the comparative decline in its profit for the year under consideration was even otherwise on the said count itself not maintainable.

8. Per contra, Shri Piyush Tripathi the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

9. Having given a thoughtful consideration to the issue in hand in the backdrop of the aforesaid contentions advanced by the Id. Authorized Representatives of both the parties, I find substance in the contention of the Ld. AR. Admittedly, it is a matter of fact borne from record that the A.O had most whimsically worked out the addition by adopting the average NP rate of the assessee for last year i.e. @ 1%. I, say so, for two-fold reasons, viz. (i) the A.O without pointing out any dissatisfaction about correctness and completeness of the accounts of the assessee; or method accounting therein followed, could not have proceeded without rejecting the duly audited books of account of the assessee under sub-section (3) of Section 145 of the Act ; and (ii) arbitrariness of the A.O can safely be gathered from the manner in which he brushed aside the reply of the assessee dated 28.09.2021 (supra) wherein, the assessee had duly demonstrated the reasons leading to a

comparative lower profit rate during the year under consideration, viz. (i) fire accident in tendu leaves collection center; (ii) disproportionate increase in purchase price of tendu leaves during the year; (iii) increase in bank charges; and (iv) incurring of fixed indirect expenses during the year under consideration.

10. Be that as it may, I am of a strong conviction that failure on the part of the A.O in neither pointing out any infirmity in the books of account of the assessee; nor dealing with the explanation which was advanced by him clearly renders the impugned addition made by him on an ad-hoc basis as not maintainable at all. In so far the view taken by the CIT(Appeals) is concerned, I am of the considered view that there appears to be no justification for him to have most arbitrarily partly sustained the addition @ net profit rate of 0.5%. Considering the aforesaid facts, I am unable to persuade myself to subscribe to the view taken by the lower authorities. Accordingly, I set-aside the order of the CIT(Appeals) and vacate the addition of Rs.6,04,007/- sustained by him.

11. Resultantly, appeal filed by the assessee is allowed in terms of my aforesaid observations.

Order pronounced in open court on 30th day of May, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 30th May, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.