

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.250/Asr/2018& ITA No.114/Asr/2019
Assessment Years: 2007-08& 2012-13**

Sameer Azad Sultan Prop M/s Azad Filing Station, MunawarabadNowpora, Srinagar. [PAN:-AHBPA3553A] (Appellant)	Vs.	ITO, Ward-3, Kashmir. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv
Respondent by	Sh. Amit Jain, Sr. DR

Date of Hearing	29.05.2023
Date of Pronouncement	07.06.2023

ORDER

Per:Anikesh Banerjee, JM:

Both the instant appeals of the same assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals) -1, Amritsar Camp at Jammu,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in

brevisly 'the Act'] for A.Ys. 2007-08 & 2012-13. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-3(3), Srinagar, [in brevisly 'the AO'] order passed u/s 144 of the Act.

2. At the outset, two appeals are under the same factual backdrop and have a common issue. Both the appeals are taken together, heard together and disposed of together. ITA No. 250/Asr/2018 is taken as lead case.

3. Brief fact of the case is that the assessment was completed in both the years u/s 144 of the Act. The Net Profit (NP) of the assessee was enhanced in both the years. For the assessment year 2007-08, the assessee declared net profit @ 0.16%. The assessee determined the turnover amount of Rs.18,17,54,882/- related to the business of petrol pump and goods carrier. The Id. AO determined the NP @ 0.57% on the turnover for A.Y. 2007-08. For AY 12-13 the assessee declared net profit @ 0.47% on the turnover. The assessment was completed u/s 144 without getting the books of account. The Id. AO determined the NP rate @ 0.75% on the total sale amount of Rs.30,32,34,289/- for AY 2012-13. The assessee had a grievance that the net profit was enhanced without any basis and without considering the rate of earlier years. So, the assessee filed an appeal before the Id.

CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. The Id. AR filed a written submission which is kept in the record. The Id. AR first invited our attention in **APB page 6**. The details chart is reflected the year wise net profit declared by the assessee before Income tax Department. The said chart is extracted as below:

SAMEER AZAD SULTAN PROP.
M/S AZAD FILLING STATION
SRINAGAR

ITA NO.250/ASR//2018 FOR AY 2007-2008
ITA NO.114/ASR/2019 FOR AY 2012-2013

CHART SHOWING THE INCOME DECLARED BY THE ASSESSEE AND DEPARTMENT ACCEPTED HIS INCOME U/S 143(3) AND IN SUMMARY MANNER FOR THE AY 2006-2007 TO 2012-2013

SR.NO.	ASSESSMENT YEAR	PERCENTAGE OF NET PROFIT SHOWN IN ITR	NET PROFIT SHOWN IN RUPEES	TOTAL SALE INCULDED TANKER INCOME	TANKER HIRING INCOME	AUDITED OR NON AUDITED	ASSESSMENT WAS MADE	ADDITIONS MADE BY THE DEPARTMENT U/S 143(3) OR NOT
1	2006-2007	0.06%(-)	Loss of Rs.110179 (-)	15,84,34,288.00	Nil	AUDITED U/S 44AB	N.A	ACCEPTED
2	2007-2008	0.16%	Rs. 281316	18,17,54,882.00	40,68,918.00	AUDITED U/S 44AB	U/S 143	ADDITION OF Rs. 7,53,683/- made by applying 0.57% on the sale of Rs. 18,17,54,882/- against 0.16% as net profit
3	2008-2009	0.21%	Rs. 439878	20,61,44,470.00	55,08,258.00	AUDITED U/S 44AB	U/S 143 (3)	Adhoc Addition of Rs. 42060 made net profit rate applied @ 0.23%
4	2009-2010	0.28%	Rs. 497402.00	17,33,48,643.00	43,78,803.00	AUDITED U/S 44AB	U/S 143(3)	Adhoc addition 40195 made and net profit rate applied @ 0.31%
5	2010-2011	0.40%	Rs. 855879.00	20,88,13,037.00	76,73,582.00	AUDITED U/S 44AB	NA	ACCEPTED
6	2011-2012	0.38%	Rs 726827.00	19,02,98,423.00	55,96,403.00	AUDITED U/S 44AB	N.A	ACCEPTED
7	2012-2013	0.47%	Rs. 1426090.00	30,37,34,288.00 (not included tanker income)	90,89,572.00	AUDITED U/S 44AB	U/S 143(3)	N.P 0.75% on total sales applied and separate addition made on account of plying of tankers

5. In the assessment year 2007-08, the assessee has grievance that no such any basic comparative was followed to determination the NP. The assessee is maintaining such net profit from earlier years which was duly accepted by revenue. The above mentioned chart is also the self-explanatory. The assessee calculated the

average net profit for the assessment year 2007-08 the assessee determined the net profit 0.27% on average basis.

5.1 For A.Y. 2012-13, assessee placed that due to the severe flood in the Kashmir Valley the assessee had lost the books of account and unable to submit before the ld. AO. The ld. AR placed the **CBDT Circular F.N. 225/303/2014/ITA.II**, dated November, 2014. The particular Circular clearly stated that the advisory for conducting scrutiny assessment proceedings in the State of Jammu and Kahsmir, in the aftermath of floods. The ld. AR argued that the assessee was unable to submit the documents before the revenue authorities for devastating flood in Kashmir Valley. The ld. AR further argued that the assessee has determined net profit 0.47% which is higher in comparable in net profit of preceding year. The NP should be restricted 0.47% related to 2012-13 as declared by assessee.

6. The ld. DR vehemently argued and relied on the order of the revenue authorities.

7. We heard the rival submission and relied on the documents available in the record. The assessee has placed a comparative chart starting from A.Y. 2006-07 and there is basis for calculation of net profit for A.Y. 2007-08 on average basis.

Considering the fact, the net profit is restricted @ 0.27% on turnover for AY 2007-08.

Related to A.Y. 2012-13 we consider the circular of CBDT. During the appeal hearing the Id. AR respectfully relied on the order of the Hon'ble **Privy Council** in the case of **Commissioner of Income-tax v. Laxminarain Badridas [1937] 5 ITR 170 (PC)** is reproduced as below: -

“Their Lordships can find no justification in the language of the Act for holding that an assessment made by an officer under Section 23(4) without conducting a local inquiry and without recording the details and results of that inquiry cannot have been made to the best of his judgment within the meaning of the section. Nor can they find any such justification in the authorities upon which the Judicial Commissioners appear to have relied.

7.1 Considering the fact of the case and CBDT Circular, for A.Y. 2012-13 the net profit is restricted to @ 0.47% on the turnover.

7.2 In view of the above, the grievance of the assessee is found justified. It is accepted as such. The Orders under first appeals are reversed.

8. As noted at the beginning of this order, the facts and issue in both these appeals are common. So, our observations qua in **ITA No.250/Asr/2018** are, mutatis mutandis, equally applicable to **ITA No.114/Asr/2019** also.

9. In the result, the appeals of the assessee bearing **ITA No. 250/Asr/2018 & ITA 114/Asr/2019** are allowed.

Order pronounced in the open court on 07.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order