

**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.242/Asr/2019
Assessment Year: 2007-08**

M/s Zum Zum Hardware, Rambagh, Srinagar, Kashmir. [PAN:-AAAFZ4953D] (Appellant)	Vs.	ITO-Ward-3(3), Srinagar. (Respondent)
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Appellant by	None
Respondent by	Sh. Nakul Agrawal, Sr. DR

Date of Hearing	08.06.2023
Date of Pronouncement	20.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Amritsar Camp at Srinagar,[in brevity the 'CIT (A)'],order passed u/s 250(6) of the Income Tax Act 1961, [in brevity 'the

Act'] for A.Y. 2007-08. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-3(3), Srinagar, [in brevity 'the AO'] order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. The Ld. CIT (A) has erred in law & facts by confirming action of AO by adding 8,00,000/- on account of Capital Addition. The addition is bad in law and needs to be deleted.

2. The Ld. CIT (A) has erred in law & facts by confirming the action of AO on applying rate of 2.5% reducing it to 1.5 % only. The addition is bad in law and needs to be deleted.

3. The Appellant reserves all right to amend, alter, add and modify the grounds of appeal.”

3. When the matter was called for hearing, none was present on behalf of the assessee. No adjournment petition is filed. On perusal of record, we find that the date of hearing is fixed on 08.06.2023 at the written request of Id. AR of the assessee. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learnedDR and on the basis of material available on the record.

4. The appeal was filed with a delay of 62 days. Considering the hardship of the people of Kashmir Valley, we condone the delay of 62 days with the consent of the Id. DR. Accordingly, the delay for 62 days is condoned.

5. Brief fact of the case is that the assessee is a hardware merchant and declared the gross profit @ .035% and net profit @ .001% in impugned assessment year. Due to the too low net profit the Id. AO enhanced the net profit @ 2.5% by comparing others trader in same locality, M/s Quazi Brothers. Further, the addition was made Rs.8 lacs as introduction of the capital by the two partners Rs.4 lac each. Thereafter the amount of Rs.8 lac was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) re-computed the net profit and reduced @ 1.5% and the other addition is remained upheld. Being aggrieved the assessee filed an appeal before us.

5.1 The Id. DR vehemently argued and relied on the order of the revenue authorities.

6. We heard the submission of the Id. DR and consider the orders of the revenue authorities. The assessee declared the net profit @ .001%. The assessing authority enhanced and re-computed the net profit @ 2.5% on turnover. But the Id. CIT(A) reduced the net profit rate @ 1.5%. During the assessment the assessee, compared one trader M/s Quazi Brothers, Zainakadal, Srinagar but the issue was not properly compared and the comparable factors was not disclosed in the order. The compared party was never be allowed to cross examine by assessee in the assessment proceeding. Related to investment of Rs. 8 lac by the partners. The revenue authorities had added back u/s 68 due to the non-satisfactory explanation by the assessee. But the investment of the partners should be examined in the hands of the partners. The addition cannot be accepted in the hands of the firm.

6.1 We respectfully relied on the order of the Hon'ble **Supreme Court of India** in the case of **Principal Commissioner of Income-tax v. Vaishno Devi Refoils & Solvex**, [2018] 96 taxmann.com 469 (SC) and the relevant portion is reproduced below:

*"Section 68 of the Income-tax Act, 1961 - Cash credit
(Firm/partner, in case of) - Assessment year 2010-11 - For*

relevant year, Assessing Officer made addition to income of assessee-firm under section 68 on account of capital introduction by one partner of firm - He was of view that creditworthiness of partner who introduced capital had not been proved - High Court in impugned order noted that amount received by assessee-firm had been duly reflected in books of account maintained by concerned partner and that assessee had furnished retails with regard to source of capital introduced in firm and concerned partner had also confirmed such contribution and concluded that assessee had duly discharged onus cast upon it. Further, court noted that if Assessing Officer was not convinced about creditworthiness of partner who had made capital contribution, inquiry had to be made at end of partner and not against firm - Whether SLP against said decision was to be dismissed- Held, yes [Para 2] [In favour of assessee]"

6.2 Considering the above discussion, the additions which were framed by the Id. AO are quashed. We dismiss the appeal order passed by the Id. CIT(A). Accordingly, the grounds of the appeal of assessee are allowed.

7. In the result, the appeal of the assessee bearing ITA No. 242/Asr/2019 is allowed.

Order pronounced in the open court on 20.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial 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.

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By order