

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 05/Kol/2023
Assessment Year : 2014-15

M/s. Dulichand Kundanmal	Vs	ACIT, Circle-2(2), Jalpaiguri
PAN: AACFD 2119 F	.	
Appellant		Respondent

Date of Hearing	15.06.2023
Date of Pronouncement	19.06.2023
For the Assessee	Shri Sunil Surana, FCA
For the Revenue	Shri P.P. Barman, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 20.12.2022 passed by the Id. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. For that the assessment order passed by the Ld. Assessing Officer is bad in law as well as on facts.*
- 2. For that the Ld. CIT (A) erred in deciding the appeal ex-parte without allowing the appellant any proper and reasonable opportunity of being heard.*
- 3. For that the Ld. CIT (A) erred in deciding the appeal ex-parte by stating that the assessee have not complied to hearing notice(s) in spite of the fact, assessee have duly requesting adjournment on 29.11.2022.*
- 4. For that the order passed by the ld. CIT(A) is bad in law since the ld. CIT(A) has not decided the issues ground wise in respect of the grounds raised by the appellant in the Memo of Appeal.*
- 5. For that the Ld. CIT (A) is bad in law since the order passed is not any speaking order nor the CIT(A) has looked into the assessment*

records and relevant materials to conclude that the order of the ld. AO cannot be interfered with.

6. For that the ld. CIT(A) erred in affirming the action of ld. AO in determining the net profit of the appellant on estimate basis at 8% of the net turnover without rejecting books of accounts of assessee.

7. For that even otherwise, the net profit rate applied by the ld. Assessing Officer is arbitrary and excessive.

8. For that the ld. CIT(A) erred in affirming the action of ld. AO in making addition of Rs. 1,55,791/- as interest income in spite of the fact that ld. AO had made addition merely on the basis of surmises and conjunctures and without stating any reasons whatsoever.

9. Under the facts and circumstances of the case order passed by ld. CIT(A) is not maintainable.

10. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

2. Brief facts of the case are that the assessee has filed its return of income on 30.10.2014 declaring income of Rs. 10,68,800/- and it was processed u/s 143(1) of the Act. The assessee during the year under consideration declared net profit of Rs. 10,68,769/- against the turnover of Rs. 21,67,61,571/- i.e. 0.49% of total turnover. The case of the assessee was selected for scrutiny under CASS following the notices u/s 143(2) and 142(1) of the Act and in response to the same, ld. AR of the assessee appeared before the AO and filed necessary audited accounts of the assessee for the assessment year in question but subsequently, the assessee did not appear before the AO, therefore, he framed assessment order u/s 143(3)/144 of the Act by making an addition of Rs. 1,73,40,926/- from the business and by doing so it was calculated @8% of the total turnover of Rs. 21,67,61,571/-. The ld. AO while doing so he did not rejected the

books of account filed by the assessee and framed the assessment at Rs. 1,74,96,720/- which further included an addition of Rs. 1,55,791/- income from other sources on account of interest income.

3. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) where the appeal filed by the assessee was dismissed.

4. Aggrieved by the above order, assessee preferred the appeal before the Tribunal raising multiple grounds of appeal. However, going through the same we notice that the core issue in the appeal involved in ground no. 6 by which the ld. AO determining the net profit of the assessee on estimated basis @ 8% on the net turnover without rejecting its books of account filed by the assessee. Therefore, we are going to adjudicate the instant issue.

5. At the time of hearing, ld. counsel for the assessee contended that addition made by the AO on estimated basis @ 8% on turnover of Rs. 21,67,61,571/- is not sustainable since while doing so, the ld. AO did not reject the books of account filed by the assessee for the assessment year in question. In preceding years i.e. A.Y. 2012-13 & 2013-14 net profit of the assessee had shown 0.22% to 0.19% respectively which was accepted by the AO. Therefore, the addition made by the AO should be rejected and direction may be given to AO by allowing net profit at 0.49% on the turnover which will arrive at Rs. 10,68,800/-.

6. On the other hand, ld. DR supported the decision rendered by the authorities below.

7. We have heard the rival contention and perused the record before us. So far as ground no. 1 to 5 are concerned, it has been stated that the impugned order has been passed ex-parte without allowing any proper reason or opportunity to the assessee. We, however, feel to find in merit in these grounds since sufficient opportunity was given by both the lower authorities but the assessee failed to comply before them and therefore, ground no. 1 to 5 are dismissed.

8. As regards, ground no. 6 and 7, it is contended that both the lower authorities erred in estimating the profit @ 10% of the turnover without rejecting books of accounts of assessee and secondly net profit rate applied @ 8% is excessive. We are aware of the fact that both the impugned orders are ex-parte but since the issue is only with regard to estimation of profits and since books of accounts of the assessee are regularly audited and have been accepted by the revenue authorities in the past from setting aside the issue on merits to the lower authority and decided to adjudicate here itself. We find that the assessee is a partnership firm engaged in the business of trading in jute, fertilizers, seeds etc. In the preceding past two financial years, net profit declared was 0.22% and 0.19% arrived at after claiming of incidental expenses including the interest in remuneration paid to partners. The preceding two financial years are on the basis of audited financial statement and the same has not been controverted by the revenue authorities. So far as the year under consideration is

concerned, we notice that better net profit rate i.e. 0.49% has been declared. As per judicial precedence, normally average of 3 years profit rate / gross profit rate is adopted to estimate the income. However, since the assessee did not appear before the lower authorities, we estimate the net profit @ 0.50% and applying the same on the turnover of the assessee, the net profit will amount to Rs. 10,83,808/- and accordingly, the income shall be calculated and remaining addition stands deleted. Thus, ground no. 6 & 7 are partly allowed.

9. As regards ground no. 8 for the addition of interest income at Rs. 1,55,791/-, we notice that the said interest income is duly disclosed in the books of account and the net profit rate of 0.49% is after considering the said interest income and since we have held to apply net profit rate of 0.50%, it inter alia will take care of interest income of Rs. 1,55,791/- and, therefore, no separate additions is required to be sustained at Rs. 1,55,791/-. Thus, ground no. 8 of assessee's appeal is allowed. The remaining grounds of appeal are general and consequential in nature and need not to be adjudicated.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.06.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 19.06.2023
Biswajit

Copy of the order forwarded to:

1. Appellant- M/s. Dulichand Kundanmal, C/o. Rajesh Mohan & Associates, Unit No. 18, 5th Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700013.
2. Respondent – ACIT, Circle-2(2), Jalpaiguri.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata