

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 16/Srt/2023 (Assessment Year 2015-16)

(Physical hearing)

2M Enterprise, 101/B Bass Complex, Near Hotel Crossway, N.H-8, GIDC Char Rasta, Vapi-396195. PAN No. ABNPJ 1872 F	Vs.	I.T.O., Ward-7, Vapi.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Miss. Chaitali Shah, C.A.
Department represented by	Shri Vinod Kumar, Sr. Dr
Date of Institution of Appeal	06/01/2023
Date of hearing	02/06/2023
Date of pronouncement	26/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 06/11/2022 for the Assessment Year (AY) 2015-16. The assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in rejecting the books of account u/s 145(3) of the Act.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 13,63,050/- by taking net profit @ 8% of the turnover.*
- 3. It is therefore prayed that addition made by assessing officer may please be deleted.*
- 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the assessee firm is in the business of waste paper, filed its return of income for A.Y. 2015-16 declaring income of Rs. 31,730/-. The case was selected for scrutiny and during the assessment, the Assessing Officer asked the assessee to furnish details of sales and purchase for the year under consideration alongwith documentary evidence. The Assessing Officer recorded that the assessee failed to furnish required details. The Assessing Officer found that the assessee's total sale was Rs. 1.70 crore and issued show cause notice as to why 10% of income should not be estimated. The assessee in response to such show cause notice, explained that he is working in an unorganized market and average profit in the business is hardly 1½% to 2%. The plea of assessee was not accepted. The Assessing Officer rejected books of account of assessee and estimated profit @ 8% of total sales.
3. The Id. CIT(A) confirmed the action of Assessing Officer in a cryptic order. The Id. AR of the assessee submits that in a similar case, the Division Bench of this Tribunal has estimated 2% of net profit in similar case in Dixaben Jayeshbhai Patel Vs ITO in ITA No. 228 & 229/Srt/2020 dated 10/02/2023. The Id. AR by referring the decision in Dixaben Jayeshbhai Patel Vs ITO (supra) submits that the Assessing Officer may be directed to take the income @ 2% of net sales of Rs. 1.70 crore.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. The Id. Sr. DR of the Revenue submits that no straight jacket formulae can be adopted in such cases. The profit margin estimated by Assessing Officer and confirmed by Id CIT(A) @ 8% of sales, is reasonable one.
5. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that during the assessment, the assessee failed to furnish complete details of sales and purchase. The Assessing Officer issued show cause notice as to why the books of account should not be rejected under Section 145(3) of the Act and income be not estimated @ 10% of total sales. The assessee instead of filing required details, took a stand that there is very low margin of profit in scrap sale. The average profit is hardly 1½% to 2%. The Assessing Officer rejected the contention of assessee and estimated 8% of profit in the total sales of Rs. 1.70 crore. The Id. CIT(A) confirmed the action of Assessing Officer in rejecting the books of account as well as on estimating the gross profit @ 8% of sales. Before me, the Id.AR of the assessee submits that profit margin in the scrap sale is very less and that the Division Bench of this Tribunal in Dixaben Jayeshbhai Patel Vs ITO (supra), who is also dealing in similar scrape business, has directed to sustain the addition @ 2% of similar transactions. On the contrary, the Id. Sr. DR for the revenue submits that no straight jacket formulae can be adopted in such cases. Therefore, considering the

overall facts and circumstances of the case and nature of business of assessee I find that estimation of income @ 8% of total sales seems to be on higher side, thus, I direct the Assessing Officer to estimate 3% of profit on total sales of assessee. In the result, ground No 2 raised by the assessee is allowed partly. Considering the facts that I have granted substantial relief to the assessee, therefore, all remaining grounds of appeal raised by the assessee have become academic.

6. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 26th July, 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/07/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat