

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: E: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.5630/Del/2018
Assessment Year: 2015-16

Mukesh Kumar, Prop. Mansarover Enterprises, C/o Anil Deep And Company, 41/85, Sadar Bazar, Muzaffarnagar, UP 251001 PAN AATPG 8548 G	vs.	The DCIT, Circle-1, Muzaffarnagar
(Appellant)		(Respondent)

For Assessee:	None
For Revenue :	Ms. Smita Singh, Sr. DR

Date of Hearing :	20.07.2023
Date of Pronouncement :	18.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A) Muzaffarnagar dated 27.06.2018 for A.Y. 2015-16.

2. The grounds raised by the assessee are as under:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the books of accounts which has been rejected by the Ld. AO arbitrarily and without any justification Us 145(3) and that too by recording incorrect facts and findings and without observing the principles of natural justice, is bad in law and against the facts and circumstances of the case.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO for not consider the difference in cost price and MRP taken by the survey team while estimating the income and not considering the Rejected/ defective Goods due to nature of business of the assessee and that too by recording incorrect facts and findings and without giving adequate

opportunity of hearing and without observing the principles of natural justice, is bad in law and against the facts and circumstances of the case.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making an addition of Rs.31,00,000/- on account of Stock by treating it as alleged income of assessee while the same has already been included by the assessee in the trading account and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without observing the principles of natural justice, is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in calculating the GP as per last year trend while the assessee maintain books of accounts and the same has been audited by Chartered Accountant and CIT (A) has estimated the NP @ 3.1% being the assessee has declared its income in the preceding years and not allowed the expenses claimed in the audited profit and loss account and that too by recording incorrect facts and findings and without observing the principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in estimating the income on estimate basis @3.1% ,as the assessee has maintained books of accounts which is duly audited by chartered accountant, and not considered the actual expenses incurred and shown in profit and loss account, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts, in directing the Ld AO to charge the special rate of tax Us 115BBE on surrendered income Us 69/69A ,while the assessee has surrendered the same ,treating it as current year business income and paid the challan of advance income tax at the time of survey, as per normal income tax rate and that too by recording incorrect facts and findings and without observing the principles of natural justice.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 234B and 234C of the Act.

3. When the appeal was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite several notices. However, on perusal of the appeal records and impugned order, we find that the appeal can be disposed of ex-parte qua assessee after hearing the arguments of Id. Senior DR. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

4. In ground no. 1 to 3 the assessee had challenged rejection of books and estimation of value of excess stock and thereby making addition of Rs. 31 lakh on account of stock by treating the same as alleged income of assessee. On these grounds the assessee has challenged that the authorities below have not given opportunity of being heard to the assessee whereas from the assessment order we note that the

assessee was represented by Shri Anil Garg, Advocate who attended proceedings from time to time on behalf of assessee. From first appellate order we also observe that the Id. CIT(A) took on record written submissions of assessee and the same counsel Shri Anil Garg represented the case. We are not in agreement with the contention of assessee that he was not given due opportunity of hearing before the authorities below.

5. Regarding rejection of books of accounts we find it appropriate to reproduce relevant para at page 11 & 12 of first appellate order which is self speaking and explains entire facts and circumstances and conduct of assessee while maintaining books of accounts which is as follows:-

The facts of the case along with material on record, assessment order passed by the AO and submission of the AR have been gone through. It is observed that the appellant has failed to give the particulars/details of the stock in terms of quantity and valuation as on 01-04-2014. The appellant has also failed to substantiate its claim that inventory of the stock which has been valued at MRP should have been valued on cost basis as the appellant could not co-relate the physical items with the respective bills/vouchers and also failed in substantiating the valuation of closing stock as shown at Rs.76,90,708/- as on 31-03-2015. The valuation and particulars of closing stock is an integral part of the books of account. Further, the AO has observed in the assessment order that the appellant has not maintained proper bills and vouchers in respect of various expenses claimed by him in the profit & loss account. Further, it is noted that the appellant has shown gross profit of Rs.33,95,447/- on total sales of Rs.3.72 crore. The declared GP includes disclosed amount of Rs.31 lacs during the Survey action us 133A of the Act. If the said amount of Rs.31 lac is excluded from the trading/profit & loss account, it would result into gross profit of Rs.2,95,447/- (0.79%) and net loss of Rs.7,17,265/- on total sales of Rs.3.72 crore as against GP in the range of approximately 4% and NP in the range of 3% in the past years. Keeping in view these facts and in the absence of genuineness and verifiability of the amount of the closing stock as on 31-03-2015 shown by the appellant, it cannot be said that the appellant has maintained proper books of account. In such circumstances it is inferred that the books of account maintained by the appellant are not complete. Therefore, the AO was justified to reject the same us 145(3) of the Act. Once the books of accounts of the appellant have been rejected the correct approach to estimate the business profits will on some reasonable basis. The appellant has shown average NP rate for last three years @, 3.1% . Therefore, following the past results of the appellant, the business profits from the normal business activities are worked out at Rs.11,53,200/- (@ 3.1%). The appellant has separately disclosed amount of Rs.31 lac and Rs.9 lac on account of unaccounted stock and unaccounted cash found during the Survey proceedings, which has also been reflected in the return of income furnished. There is no further justification for separate additions of Rs.1,17,490/- and Rs. 14,10,016/- on account of GP earned by the appellant on excess stock declared and on disclosed sales. The AO has further erred in making addition of Rs.8,13,249/- on account of cash discrepancy as physical cash found was short as compared to cash in hand as per the books of account. Accordingly income of the appellant under the head business/profession is determined at Rs. 11,53,200/- as against Rs.63,40,752/- assessed by the AO, Rs.32,87,473/- shown by the appellant. Further, income disclosed on account of stock and cash discrepancies of Rs.40 lac during the Survey action and disclosed in the return of income is directed to be assessed as

income from other sources as the same are deemed income falling w/s 69/69A of the Act. The AO is further directed to charge special rate of tax as provided us 115 BBE of the Act in respect of income of Rs.40 lac. Thus grounds of appeal Nos.1 to 6 are partly allowed.

6. In view of above and on careful perusal of assessment as well as first appellate order we are in agreement with the conclusion drawn by the Id. CIT(A) that the AO was justified in rejecting books of accounts of assessee u/s. 145(3) of the Act as there was number of defects and discrepancies, as noted by the authorities below (supra), in the books of accounts of assessee therefore ground no. 1 to 3 of assessee are dismissed.

7. In ground no. 4 & 5 the assessee has challenged estimation of NP @3.1% of total turnover by alleging that the assessee has maintained proper books of accounts and which were duly audited by a competent auditor therefore there was no requirement of estimation of NP. Since in the earlier part of this order we have dismissed ground of assessee challenging the rejection of books of accounts therefore obviously after rejection of books of accounts the AO and Id. CIT(A) are required to estimate NP. The Id. CIT(A) has estimated NP @3.1% of turnover by taking into consideration NP shown and declared by the assessee for immediately preceding year. Therefore we are unable to see any perversity or any valid reason to interfere with the findings recorded by the Id. CIT(A) on this issue. Accordingly, ground no. 4 & 5 of assessee are also dismissed.

8. In ground no. 6 the assessee has challenged charging of tax under special rate as per section 115BBE of the Act. The provision of section 115BBE of the Act is applicable from AY 2017-18 onward therefore the same cannot be applied to the AY 2015-16 under consideration. Therefore ground no. 6 of assessee is allowed and AO is directed to apply normal rates of tax to the surrendered income on account of excess cash and stock.

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

Order pronounced in the open court on 18.08.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 18th August, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi