

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 348/Kol/2022
Assessment Year: 2013-14

ACIT, CC-2(2), Kolkata	Vs.	M/s Vivekananda Mercantile Pvt. Ltd. (PAN: AADCV 2138 G)
Appellant		Respondent

Date of Hearing	20.09.2023
Date of Pronouncement	22.09.2023
For the Appellant	N o n e
For the Respondent	Shri S. B. Chakraborty, JCIT, Sr. DR

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 29.10.2021 for the AY 2013-14.

2. At the time of hearing neither the assessee nor its authorized representative appeared to attend the hearing nor any adjournment application was filed before the bench despite several opportunities given. Finally the service of notice was done through revenue 28.02.2023 pursuant to the direction of the bench. Therefore we are deciding the appeal after hearing the ld DR and after considering the facts on records.

3. Though the Registry has pointed out that the appeal is time barred by 160 days, however, in view of the decision of the Hon'ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. If we excludes the period as per the Hon'ble Apex

Court decision, then the delay left is only 16 days. Considering the reasons cited by the revenue , we are inclined to condone the same and appeal is admitted for adjudication.

4. The facts in brief are that the assessee filed the return of income on 1.10.2013 declaring income of Rs. 2,678/-. Thereafter the case of the assessee was selected for scrutiny and statutory notices were issued and duly served upon the assessee. The assessee filed the some documents however did not appeal and complied with the directions of the AO. The AO on the basis of available information/details made additions in respect of unexplained expenses of Rs. 4,45,595/- and unexplained sundry creditors Rs. 38,24,05,143/- vide assessment framed u/s 144 of the Act dated 31.12.2015.

5. In the appellate proceedings, the assessee did not appear but the Ld. CIT(A) after considering the facts of the case has partly allowed the appeal by observing and holding as under:

“Around 10 appeals of this group for AY 2012-13 and AY 2013-14, are pending before me on the same issue. In all these cases, AO has made huge disallowances on account of bogus purchases and has further made disallowance of administrative and personnel expenses. However, 3 appeals for AY 2014-15 in the case of M/s Magnetic Niryat pvt. Ltd., Raunak Vanijya Pvt. Ltd. and Agni Trade Com Pvt. Ltd. (all group companies) are also pending for disposal. These assessments were completed in the subsequent year. The AO is also different. While completing assessments in these cases, AO has taken the net profit (consequently net income) at 5% of total turnover. Given the background of the Group and the doubts about genuineness of its business transactions. I am of the opinion that assessing the net income for the current year at 5% of the total turnover of the assessee company would serve the ends of justice. Further, there is no need to make any disallowance on account of any administrative, personnel, financial expenses etc. as the estimated profit has taken into account all purchases and expenses.

The turnover of the assessee company in the current year is Rs. 62,97,82,889/-. Hence the net income (total income) of assessee company @ 5% of the turnover may be taken as Rs. 3,14,89,145/-. Hence, additions to the extent of Rs. 3,14,89,145/- only is confirmed.”

6. A perusal of the order of Ld. CIT(A) reveals that the Ld. CIT(A) has applied 5% of total turnover which comes to Rs. 3,14,89,145/- and held that no other addition was required to be made and thus deleted the remaining addition. During the course of hearing, the Ld. D.R pointed that that the assessee company was also engaged in making bogus purchases and sales and therefore the gross profit rate applied by the ld

CIT(A) is too low and unjustified. The ld AR prayed that when the assessee is engaged in providing accommodation entries sand could not prove the beneficiaries , then the entire amount involved has to be disallowed and added to the income of the assessee. After perusing the appellate order and also in the light of the facts of the case we are of the view it would be reasonable if the rate of 10% is applied to the turnover in place of 5%. Accordingly we modify the appellate order and direct the AO to apply a rate of 10% on sales. The appeal of the revenue is partly allowed.

6. In the result, the appeal of the revenue is partly allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 22nd September, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, CC-2(2), Kolkata
2. Respondent – M/s Vivekananda Mercantile Pvt. Ltd., 238, C.R. Avenue, Kolkata-700006
3. Ld. CIT(A)-20, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata