

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

I.T.A. No. 693/Kol/2023
Assessment Year: 2016-17

GKE Medical Private Limited 114/2, Ramlal Agarwal Lane, Kolkata- 700050 (PAN: AADCG6271B)	Vs.	ACIT, Circle-7(2), Kolkata.
Appellant		Respondent

Date of Hearing	20.09.2023
Date of Pronouncement	22.09.2023
For the Appellant	Shri Shri Devesh Poddar, Advocate
For the Respondent	Shri S. B. Chakraborty, JCIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

Appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 22.05.2023 for AY 2016-17.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order passed by the AO u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) wherein the AO has estimated the profit by applying a rate of 1.35% on the turnover of the assessee thereby confirming the addition of Rs.26,08,125/-.

3. Facts in brief are that the assessee filed the return of income on 31.03.2017 disclosing loss of Rs.1,47,193/-. The return of income was processed u/s. 143(1) of the Act and thereafter the case of the assessee was selected for scrutiny under CASS. During the course of assessment proceeding, the details called for by the AO were duly supplied by the assessee. The AO, on the basis of details furnished, noted that during year the assessee has suffered huge loss vis-à-vis the preceding assessment years for which the assessee has not given any justification. Finally, the AO held that assessee’s book results were not reliable and rejected the books of account u/s. 145(3) of the Act and framed the assessment as best judgment assessment by applying the rate of net profit at 1.35% of the total turnover of Rs.19,31,93,473/- and calculated the estimated income at Rs.26,08,125/-.

4. In the appellate proceeding, Ld. CIT(A) confirmed the order of AO by dismissing the appeal by observing and holding as under:

“6.3 The appellant has failed to file any justification/reasons for difference in the amounts of trade payable to various parties as per details filed and as shown in the balance sheet. The extracts from books of accounts, purchase Bills, Sales Bills, Bank Statements and other supporting documents were neither filed during the assessment proceedings nor during the assessment proceedings. The reasons or justification for sharp decline in the G.P. and N.P. ratio during the year under consideration when compared to earlier years was not filed by the assessee. Therefore, I find that the AO was justified in rejecting the books of accounts u/s 145(3) and estimating the net profit on the basis of average net profit for earlier years excluding AY 2015-16 whose results were not reliable. In view of above, addition of Rs. 26,08,125/- made by the AO is hereby confirmed. The grounds of appeal are dismissed.”

5. After hearing the rival contentions and perusing the material available on record, we find that the business operation of the assessee has been discontinued from the next financial year. We note that the assessee has taken a cash credit limit from SBI and has defaulted to pay the interest to the SBI on the cash credit account. The cash credit account became NPA and consequently bank initiated proceedings against the assessee company for recovery of the same. We note that only because of this reason the business of the assessee had been adversely affected and was finally closed though the company is still subsisting. We even note that the stocks of the company were reduced to nil. In the current year, we also note that the NP ratio of the assessee over the years is also very meager as is apparent from para 8 of the written submission available at page 2 of the paper book, which is reproduced as under:

AY 2013 – 14	1.39%
AY 2014 – 15	0.83%
AY 2015 – 16	(.86%)
AY 2016 – 17	(36.32%)
AY 2017 – 18	NIL Turnover – Loss of Rs. 1,65,119/-
AY 2018 – 19	NIL Turnover – Loss of Rs. 1,39,580/-

6. On perusal of the comparative rates we observe that there was sharp decline in the profit over the years and during year this has declined considerably due to this financial crisis. The profit margin has also deteriorated and heavy losses were sustained and business was ultimately shut down. We also note that the reason given by the AO is not cogent and convincing for rejecting the books of account. Even in the earlier assessment year i.e. AY 2015-16 the AO has accepted the loss from the business in which the net loss rate was given

0.86%. Considering these facts and circumstances, we are of the view that there are sufficient and reasonable cause for suffering losses in the business of the assessee which is triggered by the cash credit limit being declared NPA by the SBI and commencement of recovery proceedings against the assessee. Considering these facts and circumstances, we are of the view that sec. 145(3) was wrongly invoked without pointing out any defects in the books of the assessee. Even where the assessment is to be u/s. 144 of the Act, the AO has to give reasons and basis for the addition. But in the present case, there is no such reasoning or finding given by the AO. In the facts and circumstances, we are of the view that the invocation of section 145(3) of the Act and estimation of income at 1.35% is unreasonable and cannot be sustained. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

6. In the result, the appeal of assessee is 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

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi.
4. CIT, . ,
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata