

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH :DB
(VIRTUAL HEARING AT NEW DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.70/Jodh/2020
Assessment Year: 2013-14**

DCIT, Circle-1, Udaipur (Rajasthan) (PAN:AAACU4309D)	Vs.	U.N. Automobiles Pvt. Ltd., Goverdhan Vilas, Old NH-8, Ahmedabad Road, Valicha,Udaipur
(Appellant)		(Respondent)

Present for:

Department by : Shri Gautam Chand Baid, CA
Assessee by : Shri Rajiv Mohan, JCIT-DR

Date of Hearing : 11.09.2023
Date of Pronouncement : 18.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of learned Commissioner of Income-tax(Appeals)-1, Jodhpur, Rajasthan Appeal No.271/2017-18 dated 12.12.2019 against the order under Section 144/147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 22.12.2017 passed by DCIT, Circle-1, Jodhpur for the assessment year 2013-14.

2. Grounds taken by the Revenue are as under:

1. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.3,08,778/- on account of contract receipts.
2. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.62,318/- made on account of commission receipts.
3. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.57,89,510/- made on account of cash deposited in various bank.
4. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.96,61,840/- out of total addition of Rs.1,20,07,940/- by reducing NP rate to 0.84% from 4.7% on total gross receipts of Rs.25,54,88,102/-.

3. Brief facts as noted from the statement of facts are that assessee is a dealer for Tata Motors Ltd. for Sales, Service and sale for Commercial Vehicles and Passenger Cars. For the year under consideration, assessee did not file its return of income. Since, there was no response to the letter No.719 dated 15.07.2016 issued by the learned Assessing Officer served upon the assessee to furnish copy of its income-tax return or to furnish reason for not filing the return, notice under Section 148 was issued on 30.12.2016. In response to notice under Section 148, again assessee did not furnish any return. Learned Assessing Officer issued statutory notices under Section 143(2) along with notice under Section 142(1) dated 03.10.2017 which were served on the assessee. Copy of

reasons recorded for issuing notice under Section 148 was also supplied to the assessee. Learned Assessing Officer also noted the facts about accounts of the assessee not audited and hence details, filed by the directors of the assessee has no relevance as they are not based on audited financial statements. Owing to limitation for completing the assessment, due by 31.12.2017, learned Assessing Officer proceeded to make the best judgment assessment under Section 144. For this, he issued show-cause-notice dated 15.11.2017 describing the proposed additions and seeking explanation from the assessee. Learned Assessing Officer sought explanation as to why addition should not be made for the following:

- (i) 10 percent of receipt Rs.3068788 shown under 26AS on which TDS deducted u/s.194C,
- (ii) 40 percent of receipt Rs.1116838 shown under 26AS on which TDS deducted u/s.194J,
- (iii) 80 percent of receipt Rs.77978 shown under 26AS on which TDS deducted u/s.194H,
- (iv) Interest receipt Rs.5789510 shown under 26AS on which TDS deducted u/s.194A,
- (v) Rs.11281311 being cash deposited in banks accounts of assessee.

3.1 Assessee made its reply vide letter dated 21.11.2017 which is reproduced in the impugned order. After considering the submissions of

the assessee, learned Assessing Officer completed the assessment by making the additions as stated in the grounds above.

4. Learned Commissioner of Income-Tax(Appeals) while giving relief to the assessee noted that once income has been estimated by the learned Assessing Officer by applying net profit rate on the total gross receipts, then no other addition is required to be made on account of any other trading items including the contract and commission receipts. According to the learned Commissioner of Income-Tax (Appeals), once business income has been assessed at 4.7% of gross receipts, then, there is no reason to make other additions on account of business receipts. According to him, when the books of accounts have been rejected, the Assessing Officer cannot fall back upon the same books for making addition of interest accrued on FDRs which are held as business assets of the assessee. Based on these observations, learned Commissioner of Income-Tax(Appeals) deleted the additions made in respect of contract receipts, commission receipts and interest earned on FDRs. He also deleted the addition on account of unexplained cash deposit by holding that the cash credits are in the nature of receipts obtained from the business and since income of the assessee has been estimated by applying NP rate, no separate additions on the business receipts in cash is warranted.

4.1 On the issue relating to percentage of net profit to be applied on the total gross receipts of the assessee, learned Commissioner of Income-Tax(Appeals) observed that learned Assessing Officer has applied the N.P. rate of 4.7% based on N.P. rate declared by a third party, namely, Marudhara Motors, Jodhpur Division of M/s. Sunil & Co.

4.2 Learned Commissioner of Income-Tax(Appeals) took the view based on the decision of co-ordinate bench of the ITAT, Jodhpur in the case of Ajay Goyal vs. ITO in 199 TTJ 164 that the best guide for estimation of the trading results after rejecting the books is either the past history of the assessee or any other comparable case. The past history of the assessee takes preference over a comparable case. He, thus, took the trading results of the assessee company of the past three years which had been subjected to scrutiny assessment under Section 143(3) of the Act and adopted the N.P. rate of 0.84% on the gross receipts as against 4.7% applied by the learned Assessing Officer. Assessee was, thus, granted partial relief on this issue. Aggrieved, revenue is in appeal before the Tribunal on the above stated grounds of appeal.

5. Before us, learned Senior DR strongly supported the order of learned Assessing Officer. He stated that assessee has neither filed its return of income nor furnished the audited financial statement which in itself is a good reason for the addition made by the learned Assessing

Officer. He further submitted that learned Assessing Officer had no other option but to complete the assessment under Section 144 by resorting to best judgement for which he adopted the N.P. rate of 4.7% of a third party comparable company. Learned Senior DR asserted that the order of the learned Assessing Officer be upheld.

6. Per contra, learned counsel for the assessee explained the reason for not filing the return and not getting the books of accounts audited which is owing to disruption of the business resulting into heavy losses which ultimately led to termination of dealership of TATA Motors Ltd. and bank loans becoming Non-Performing Assets (NPA). According to him, assessee struggled for its survival. Learned counsel stated that the present case is a case of best judgment assessment based on estimation of income. According to him, once an estimation of income is done by applying certain percentage on the gross receipts of the assessee, all other additions/disallowances get subsumed in the estimation of income and no separate addition or disallowance is called for.

6.1 Learned counsel pointed to the sharp decline in the business of the assessee by submitting that the turnover of the assessee in assessment year 2011-12 was at Rs.239.85 crores which came down to Rs.25.55 crores in the years under consideration. According to him, this decline at 1/10th of the turnover in assessment year 2011-12 has led to the non-

compliance of filing the income-tax return and audited financial statements. He referred to the trading results of the assessee in the past three years which had been subjected to scrutiny assessment under Section 143(3) to demonstrate that learned Commissioner of Income-Tax(Appeals) rightfully applied N.P. rate of 0.84% on the gross receipts in the year under consideration. The trading results of the past three years are tabulated as under:

Assessment Year	Turnover	G.P. Rate	N.P. rate
2009-10	99,32,39,141	3.01%	0.5%
2010-11	1,49,35,00,365	2.13%	0.83%
2011-12	2,39,84,86,154	4.46%	0.84%

6.2 According to the learned counsel, gross receipts of the assessee of Rs.25,54,88,102 adopted by the learned Assessing Officer for the purpose of making best judgment assessment by estimating the income at 4.7% is not in dispute. The issue is in respect of net profit rate adopted by the learned Assessing Officer which is based on third party comparable without giving any detail as to for which year this rate of 4.7% of the third party relates to. Also, there is no detail in respect of line

of business in which the comparable operates and its scale of operation. According to him, there is no comparability analysis by the learned Assessing Officer for adopting the N.P. rate of a third party. He, thus, stated that learned Commissioner of Income-Tax(Appeals) has taken a rational approach of considering the trading results of the assessee itself for the past years which have been subjected to scrutiny assessment and adopted the N.P. rate of 0.84% which is highest amongst the three years data, as tabulated above.

6.3 In respect of additions made on account of contract receipts, commission, interest on FDRs and cash deposit, learned counsel submitted that all of these have been rightly deleted since they get subsumed once the income is estimated by applying net profit percentage on the total gross receipts, in completing the best judgment assessment.

7. We have considered the rival contentions and perused the material on record. We have given our thoughtful consideration to the submissions made before us. Admittedly, it is a fact on record that impugned assessment is framed under Section 144 as a best judgment assessment owing to the failure on the part of the assessee to file its return of income and getting its books of accounts audited. The gross receipts of Rs.25,54,88,102 are also not in dispute which has been

adopted by the learned Assessing Officer for the purpose of estimating income by applying net profit rate of 4.7% based on third party comparable. It is a settled position of law to frame an assessment to the best of a judgment, learned Assessing Officer must not do so dishonestly or vindictively or capriciously. He must make what he honestly believe to be a fair estimate of the proper figure of assessment. For this purpose, he must be able to take into consideration local knowledge and repute having regard to the circumstances of the assessee and his own knowledge of previous returns of income and assessments of the assessee, as well as all other matters which will assist him in arriving at a fair and proper estimation. Though, there is an element of guesswork in a best judgment assessment, it should not be wild one but should have a reasonable nexus to the available material and the circumstances of the case. Based on these stated principles of best judgment assessment, we find ourselves in agreement with the submissions made by the learned counsel a third party without bringing on record any kind of comparability analysis. We do not find any reason to interfere with the finding of the learned Commissioner of Income-Tax(Appeals) on the adoption of N.P. rate of 0.84% on the gross receipts of Rs.25,54,88,102 and giving partial relief to the assessee. Accordingly, ground no.5 taken by the Revenue is dismissed.

8. Before considering ground nos. 1 to 4 in respect of additions for contract receipts, commission, interest on FDRs and on account of cash deposits in various bank accounts, we refer to the details furnished by the assessee in respect of rate of net profit computation (Sale/net profit before tax as per profit and loss a/c x 100) is tabulated as below:

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	Averaging
Sale	99,32,39,141	1,49,35,00,365	2,39,84,86,154	4,88,52,25,661
Net Profit Before Tax	49,70,015	1,24,38,773	2,01,43,174	3,75,51,962
Net Profit Rate Sale	0.50%	0.83%	0.84%	0.77%

8.1 Rate of net profit after inclusion of other income in the numerator sale amount.

Particulars	FY 2008-09	FY 2009-10	FY2010-11	Total for Averaging
Sale	99,32,39,141	1,49,35,00,365	2,39,84,86,154	4,88,52,25,661
Other Income	11,57,31,360	5,09,47,004	5,01,26,656	21,68,05,021
Total (Sale+Other Income)	1,10,89,70,501	1,54,44,47,370	2,44,86,12,811	5,10,20,30,682
Net Profit Before Tax	49,70,015	1,24,38,773	2,01,43,174	3,75,51,962

Net Profit Rate Sale + Other Income	0.45%	0.81%	0.82%	0.74%
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8.2 From the above tabulation, we note that by including other income in the numerator, the N.P. rate for assessment year 2011-12 comes to 0.82% which is the highest N.P. rate amongst the three years. Learned Commissioner of Income-Tax(Appeals) has adopted the rate of 0.84% while estimating the income on the gross receipts. Considering these facts, we are in agreement with the observations made by the learned Commissioner of Income-Tax(Appeals) while giving relief on these four issues whereby he has observed that these receipts are in the nature of business receipts and that once the income is estimated by applying N.P. rate on the total gross receipts, no other addition is required to be made on account of items already included in the total gross receipts. Assessee has earned interest on FDRs which were made for the purpose of availing credit limits. It has also received interest from TATA Motors on the deposits made by it for the purpose of supply of vehicles. According to the assessee, these FDRs are held as business assets. Assessee pays interest @ 14% to bank on its credit facility, funds from which have been utilised for making the FDRs. Further, in respect of cash deposits in the bank, considering the details furnished and as reproduced in the

impugned assessment order demonstrate, they pertain to the business transaction of the assessee. Accordingly, we do not find any reason to interfere with the finding given by the learned Commissioner of Income-Tax(Appeals) in respect of deleting the additions made by the learned Assessing Officer on these four items pertaining to ground nos. 1 to 4. Accordingly, ground nos. 1 to 4 are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 18 .09.2023.

Sd/-

**(Saktijit Dey)
Vice-President**

Sd/-

**(Girish Agrawal)
Accountant Member**

Dated: 18September, 2023

Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches, New Delhi