

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 168/KOL/2023
Assessment Year: 2018-19**

***Gopal Jaiswal.....Appellant
[PAN: AEYPJ 7678 F]***

Vs.

ITO, Ward-33(2), Kolkata.....Respondent

Appearances:

Assessee represented by: Sh. Siddharth Agarwal, A/R.

Department represented by: Sh. Amitava Sen, Addl. CIT.

Date of concluding the hearing : July 4th, 2023

Date of pronouncing the order : October 3rd, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 12.01.2023 arising out of the assessment

order framed u/s 143(3) read with Sections 143(3A) & 143(3B) of the Act dated 13.03.2021.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that the Ld. CIT(A) was not justified in confirming the addition of Rs.85,59,348/- made by the A.O. under the head “Income from Business Profession” by estimating the business profit at Rs. Rs. 1,14,28,598/-, being 8% of the total turnover of Rs. 14,28,57,480/-.

2. For that, without prejudice to above, the Ld. CIT(A) ought to have estimated a reasonable profit on the turnover of Rs. 14,28,57,480/- instead of affirming the A.O.’s action of unreasonable estimation of profit of 8% of turnover.

3. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. The facts in brief are that the assessee is an individual engaged in business. Income of Rs. 28,69,250/- declared in the e-return for AY 2018-19 filed on 30.10.2018. Case selected for limited scrutiny through CASS for the reason ‘large cash deposits in bank account(s)’ followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. AO called for the details of bank account and found that huge cash was deposited. The assessee gave a reply regarding the source of the cash being sales made during the year. Ld. AO accepted these details but thereafter noticed that the assessee has filed ITR 3 claiming it to be a non-account case. Ld. AO noticed that the assessee has a turnover of aprox Rs. 14.28 Crore and considering that the assessee has tick non-account case in ITR 3 to be covered under presumptive taxation for business u/s 44AD of the Act. Ld. AO completed the assessment by estimating net profit @ 8% of the gross receipts and the same

amounted to Rs. 1,14,28,598/-. Since the assessee has disclosed income of Rs. 28,69,250/- in the income tax return the balance amount of Rs. 85,59,348/- was added to the income of the assessee towards remaining estimated profits and income assessed at Rs. 1,14,28,600/-.

4. Aggrieved, the assessee preferred appeal before Id. CIT(A) and stated that books of accounts were duly audited u/s 44AB of the Act and presumptive taxation u/s 44AD of the Act applies only where the turnover is less than Rs. 2 Crore. However, Id. CIT(A) after observing the details about the major purchases of the assessee from a specified person, disregarded the audited statement of the assessee and confirmed the action of the AO.

5. Aggrieved, the assessee is now in appeal before this Tribunal. Id. CIT(A) referring to the paperbook dated 18.03.2023 containing 98 pages and also referring to the copy of income tax return for AY 2018-19 which was placed before this Tribunal on 26.03.2023 submitted that the books of accounts are regularly audited. Reference was also made to the year-wise sales, gross profit ratio and net profit ratio. Tax audit reports were also referred and was submitted that both the lower authorities erred in not accepting the book results and erred in applying the provisions of Section 44AD of the Act and estimated the profit @ 8%.

6. Id. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard rival contentions and perused the records placed before us. We notice that estimation of net profit @ 8% as

against the net profit rate of 2.5% declared by the assessee is in dispute before us. We notice that the assessee has achieved a turnover of Rs. 14.28 Crore during the year and in the preceding year total turnover was Rs. 16.20 Crore. The net profit rate declared in the audited financial statement for the year under appeal is 2.5% as against 1.26% in the preceding financial year. The case of the assessee was selected for scrutiny for large cash deposit. The assessee explained the source of cash to the satisfaction of the AO who has not made any addition regarding cash deposit. Ld. AO based on the income tax return wherein the assessee inadvertently tick the column for 'no account case' and based on such act at the part of the assessee in filing the return, ld. AO resorted to apply the provisions of Section 44AD of the Act and estimated the profit of the assessee @ 8%.

8. So far as Section 44AD is concerned the same relates to special provision for computing profits and gains of business on presumptive basis in the case of an eligible assessee engaged in an eligible business. As per Explanation to Section 44AD of the Act eligible business consists of (i) any business except the business of plying, hiring or leasing goods carriages referred to in Section 44AE; and (ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees. Considering the fact that the turnover of the assessee is Rs. 14.29 Crore, the provisions of Section 44AD of the Act cannot be applied in the case of assessee. So far as estimating of profits is concerned, we notice that in the income tax return filed by the assessee on ITR 3 even though it has taken the column 'no account case' but on page 2 of

the Form complete details of the audit report u/s 44AB of the Act are mentioned wherein the assessee stated that it is covered u/s 44AB of the Act and books of accounts have been audited by a Chartered Accountant. The assessee also mentioned the details of the Chartered Accountant company along with date of audit report which is 29.10.2018 and the same stands duly uploaded on the income tax portal. These glaring facts are very much available in the income tax return copy of which was placed before the AO and he ought not to have directly resorted to the provisions of Section 44AD of the Act and should have examined the tax audit report and, if necessary, should have got the limited scrutiny converted to complete scrutiny and thereafter, carry out the assessment proceedings to examine the complete books of accounts and then if any discrepancy could have been noticed then estimation of profits could have come in picture.

9. However, since in the instant case, the assessee has properly maintained the books of accounts which have been duly audited and ld. AO has not disputed the book results appearing in the audited financial statement uploaded on the income tax portal we fail to find any justification in the action of ld. AO of estimating the net profit rate of 8% and the book results declared by the assessee showing net profit rate of 2.5% ought to have been accepted. We, thus, set aside the finding of ld. CIT(A) and delete the addition of Rs. 85,59,358/- made by ld. AO towards estimating profits over and above the income declared by the assessee. Thus, ground no. 1 & 2 raised by the assessee are allowed.

10. Ground no. 3 is general in nature which needs no adjudication.

11. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 3rd October, 2023

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 03.10.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Gopal Jaiswal, C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700 069**
- 2. ITO, Ward-33(2), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata