

IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH : VARANASI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.26/VNS/2018
Assessment Year: 2009-10

Saheb Jaan,
S/o Babu Jann,
R/o Kajipura,
Islamaabaad,
Distt. Ballia,
UP – 277 001.

Vs Income-tax Officer,
Ward – 2(5),
Ballia.

PAN: CLJPS1520F

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri A.K. Singh, Sr. DR
Date of Hearing	:	25.09.2023
Date of Pronouncement	:	27.09.2023

ORDER

PER B.R. BASKARAN, AM:

The assessee has filed this appeal challenging the order dated 18.01.2018 passed by Ld CIT(A), Varanasi and it relates to the assessment year 2009-10.

2. The assessee is aggrieved by the decision of the Id. CIT(A) in confirming the addition of Rs.6,56,420/- due to increase in the gross profit rate.

3. None appeared on behalf of the assessee. Hence, we proceed to dispose of the appeal *ex parte* without the presence of the assessee. The assessment of the year under consideration was reopened u/s 148 of the Act on noticing that the assessee has deposited a sum of Rs.93,66,272/- in his bank account during the year under consideration. In the reopened assessment, the AO has noticed that the assessee is a wholesaler of fruits and vegetables and he has declared total turnover of Rs.99.52 lakhs and gross profit of Rs.3.38 lakhs. Thus, above-said gross profit works out to Rs.3.40%. The assessee was asked to produce bills and vouchers relating to purchases & sales and expenses. However, the assessee did not produce them. Accordingly, the AO estimated gross profit @ 10% which worked out to Rs.9,95,201/-. Accordingly, the AO added the difference of Rs.6,56,420/- to the total income of the assessee.

4. Before the Id.CIT(A), the assessee did not press this ground and, hence, the Id.CIT(A) sustained the addition. However, the assessee has filed this appeal challenging the said decision of Id.CIT(A).

5. As noticed earlier, the assessee did not appear before us. In the grounds of appeal, the assessee has submitted that the average rate of profit in fruits business works out to 5% only and, accordingly, prayed that the gross profit should be estimated @ 5%. However, we noticed earlier that the assessee did not press this ground before the Id.CIT(A) and, hence, the Id.CIT(A) did not have occasion to examine the above-said claim of the assessee. Accordingly, we are of the view that in the interest of justice, the assessee should be provided one more opportunity to press his case before the Id.CIT(A). The Ld D.R submitted that the assessee cannot agitate the additions which have been agreed to. However, we are of the view that if the assessee discovers any new facts to support his case, then it can be agitated. Accordingly, we set aside the order passed by the Id.CIT(A) and restore this issue to the file of the Id.CIT(A) for examining it afresh. After affording

adequate opportunity of being heard to the assessee, the Id.CIT(A) may take appropriate decision in accordance with the law.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 27.09.2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Dated: 27th September, 2023

dk

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

Asstt. Registrar