

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 174/Ind/2020**  
**Assessment Year: 2016-17**

DCIT, 3(1), Indore.	<b><u>बनाम/</u></b> <b>Vs.</b>	M/s. Shree Santoshi Traders, FH 298, Scheme No. 54, Vijay Nagar, Indore
(Revenue / Appellant)		(Assessee / Respondent)
<b>PAN: ABAFM0791P</b>		
Assessee by	Shri S.S.Deshpande, CA	
Revenue by	Ms.Simran Bhullar, CIT DR	
Date of Hearing	21.09.2023	
Date of Pronouncement	31.10.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 09.01.2020 passed by learned Commissioner of Income-Tax (Appeals)-I, Indore ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 12.12.2018 passed by learned ITO, Ward-3(1), Indore ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2016-17, the revenue has filed this appeal on following effective ground:

*"Whether on the facts and in the circumstances of the case and the CIT(A) has erred in law, in restricting the net profit @ 3.5% instead of 10% as taken by the AO."*

2. This revenue's appeal was originally dismissed by order dated 20.01.2022 of ITAT, Indore on the ground that the dispute involved had been settled by assessee in Vivad Se Vishwas Scheme, 2020 ("VSV"). Subsequently, the revenue filed M/A No. 20/Ind/2022 seeking re-call of ITAT's order on the footing that the assessee had opted for VSV *qua* the addition confirmed by CIT(A) in first-appeal and not *qua* the issue contested by Revenue in appeal before ITAT, therefore the Revenue's appeal had been wrongly dismissed. The revenue's prayer was accepted; the M/A was allowed; original ITAT order dated 20.01.2022 was re-called and this appeal being ITA No. 174/Ind/2020 was re-stored for hearing with same registration number. This way, the appeal has again come before us for hearing.

3. Brief facts leading to present appeal are such that the assessee filed its return of income of relevant assessment-year on 19.12.2016 declaring a total income of Rs. 11,02,980/-. The assessee is a liquor contractor. The case was selected under scrutiny and notices u/s 143(2)/142(1) were issued from time to time which was duly complied with by assessee. While completing assessment, the AO invoked section 145(3) and rejected books of assessee. Thereafter, the AO estimated income of assessee's business by applying 'Gross-Profit Rate' of 10% instead of 3.19% declared by assessee. Accordingly, he made an addition of Rs. 3,41,37,875/- to the total income. Aggrieved, the assessee went in first-appeal wherein the CIT(A) directed the AO to apply 'Net Profit Rate' of 3.50% and recalculate addition so as to delete extra addition. This way, the assessee got part-relief in first-appeal. Now, the revenue is aggrieved by relief given in first-appeal and has come in this appeal before us.

4. At first, we extract the relevant portion of AO's order in which the impugned addition has been made:

*"Assessee is liquor contractor and running the shops of foreign and country liquor shop along with the Beer etc. Assessee is doing the business mainly in*

Ujjain District. As per details submitted assessee has shown total sale of Rs. 50,20,39,852/- and worked out gross profit of Rs. 1,60,50,260/- which is @ 3.197% and also net profit at Rs. 11,02,984/- which is @ 0.219% of gross sales of liquor. During the course of assessment proceedings, assessee was asked to furnish the detailed explanation along with supporting evidences with regard to the –

- Sale shown. How the same worked out.
- Month-wise salary registers
- Justification and details of expenses claimed with supporting bills and vouchers.

He was also asked to produce the books of accounts for verification.

In response to this assessee vide his reply submitted on the e-proceeding stated that:

1. "...Complete details of expenses have been already submitted in the trading and profit and loss account alongwith the audit report.
2. That this is first year of business therefore comparison chart of GP and NP is not being furnished....."

Later on assessee has also furnished the copies of ledger account some heads with regard to the expenses claimed.

During the course of assessment proceedings, the assessee was specifically asked to furnish shop-wise & brand-wise details of all receipts and sale which were admittedly not produced. While showing expenses in the profit and loss account to reach the figure of net profit various expenses have been debited as mentioned above in relation to which original primary evidences the original bills/vouchers has not been produced even after giving/availing several opportunities during the assessment proceedings. Assessee has also not furnished/substantiate the total sale shown. Therefore, the way by which the books of accounts were maintained is not satisfactory. Further it is also observed that as per the Excise Rules, the assessee has to maintain the stock register and inspection book after obtaining the same from the Excise Department and statement of sales and stock is also to be submitted to the Excise Department which also have not been done. In view of the non-production of the vouchers mainly relating to sale of the liquor and expenses so claimed, it is concluded that the books of accounts have not been properly maintained. Therefore, profit cannot be properly deduced from such account and on the basis of such non-maintenance/non-production of the sale vouchers, the sale version, which was on estimate basis could not be accepted and when even the sale version was not open to verification. In such a circumstance, the books result so shown and account is hereby rejected u/s 145(3) of the Income-tax Act, 1961

The view so adopted is also supported by the following decisions:

(2014) 42 taxmann.com 432 (Raj), High Court of Rajasthan in the case of Trilok Chand Girdharilal & Party v. ITO, Ward 1, Sawaimadhopur:

Where the assessee carrying on business of liquor had not maintained sale vouchers, rejection of assessee's account books and trading results by invoking provisions of section 145(3) was justified and Commissioner (Appeals) had rightly applied average gross profit rate in instant case – held – Yes.

Considering all the submissions made by the assessee, and after comparing comparable cases the gross profit rate at 10% is hereby applied. Gross profit rate @ 10% is applied as is the presumptive rate of retail trading of any commodity and liquor being so exception. It is worthwhile to mentioning here the fact that in foreign liquor business profit rate is even higher. For example, in case of an assessee who is in the same business namely Shri Chetan Swaroop Jaiswal, Ujjain net profit @ 6.04% has been shown for the AY 2010-11.

Thus, in view of the above the Gross profit from liquor contract business is estimated @ 10% on the total turnover/sales as shown at Rs. 50,20,39,852/- which works out to Rs. 5,02,03,985/- in place of Gross profit shown at Rs. 1,60,50,260/-. The difference in net profit is worked out as under :-

Gross profit as worked out above	Rs. 50203985/-
Less : Total expenses so claimed in the P&L A/c	Rs. 4963126/-
Net profit assessed	Rs. 35240859/-
Less: Profit already declared	Rs. 1102984/-
Difference to be added to the total income	Rs. 34137875/-

In view of the above, the difference in net profit so worked out and profit shown is at Rs. 34137875/- is hereby added to the total income of the assessee on estimation basis."

5. Now, we extract the order of first-appeal wherein the CIT(A) has granted part-relief to assessee:

"3.9 I have gone through the contents of written submissions, the reasons given by the AO for estimation of profit and also various decisions of courts. It has been observed that the AO has estimated the gross profit @ 10% of total turnover as against 3.19% shown by the appellant. The reasons given for estimating the gross profit has been the presumptive rate of taxation of trading. In my considered opinion, the AO has committed a mistake in estimating the profits on presumptive basis without comparing the trading results of other assesseees in the same line of business. The comparison of net profit shown by M/s. Chetan Swaropp Jaiswal, Ujjain, for the assessment year 2011-12 has been totally misplaced. The AO cannot compare the trading results in assessment year 2016-17 with those in the assessment year 2011-12. I have also gone through the submissions of the appellant stating that

liquor policy after 2014-15 has undergone a major change due to levy of VAT and also steep increase in cost of liquor contracts due to increase in license fees. It has also been contended that the cost of liquor contracts have gone up by 25% to 35% whereas the price of liquor has not gone up in the same proportion. The contention of the appellant seems tenable for the simple reason that over a period of time, the excise duty on liquor business has been the major source of revenue for the states which keeps on increasing as and when the revenue is required to be mobilized. The consumption of liquor remains more or less the same and has a tendency of decreasing with the increase in prices due to social and economic reasons. The appellant has also given trading results of following comparable cases in liquor business in the AY 2016-17:-

Name of firm	Turnover	Gross profit	Gross profit %	Net profit	N.P.%
Umesh Ashok Joshi	106073450	3520840	3.22	374660	0.35%
Sanjauy Surajmal Kasera	75873836	2712320	3.57	406662	0.54%
Saurabh Omprakash Jaiswall	117542006	4710280	4.00	480196	0.41%

3.10 It has also been stated that the area of business operation of above mentioned parties has been the same as that of the appellant. The year of trading has also been the same i.e. A.Y. 2016-17. It has also been brought to my notice that if, the net profit calculated by the AO on the basis of gross profit rate of 10% is considered, the net profit rate comes at 7.01% as against 0.35% 0.54% and 0.41% shown by Shri Umesh Ashok Joshi, Shri Sanjay Surajmal Kasera and Shri Saurabh Omprakash Jaiswal respectively as detailed above. Similarly, this net profit of 7.01% would have been as against the net profit of 1.12% as reflected by the appellant. It has therefore been contended that the AO has not been justified in estimating the gross profit @ 10% of turnover to arrive at net profit of Rs. 3.52 crores. The appellant has also relied on the decisions of Hon'ble ITAT, Indore Bench in the case of ACIT vs. Avinash Chalana & Co. (2016) 28 ITJ 295 Trib. (Ind), ACIT v. Gulmohar Traders (2016) 28 TTJ 302 Trib. (Ind) and ACIT v. Surevin Marketing Pvt. Ltd. (2016) 28 TTJ 299 Trib. (Ind.). In all these decisions, the net profit rates ranging between 1.5% to 2.35% have been confirmed by the Hon'ble ITAT, Indore Bench, Indore. But these cases have been found to be pertaining to the assessment years prior to the assessment year 2014-15 and in these cases, the turnover has also been found estimated and the rejection of books of accounts have not been confirmed either by the Ld. CIT(A) or Hon'ble ITAT. The facts of the case have already been discussed in detail and distinguished from the facts of the present case. I have clearly held that the AO was absolutely justified in rejecting the books of accounts and making estimates of net profit. However, it has been observed that the AO was not justified in estimating gross profit @ 10% resulting in to net profit of over Rs. 3.52 crores (7.01%) which has not been found shown and confirmed in any liquor trader of the area. Therefore, after taking into account the entirety of facts and circumstances, in the interest of natural justice, it shall be reasonable to estimate and confirm the net profit @3.5% on total turnover of Rs. 50,20,39,852/- before interest and remuneration to the partners which comes at Rs. 1,75,71,394/- as against the net profit of Rs. 56,32,318/- shown by the appellant before interest and remuneration to the partners. While estimating the net profit @ 3.5%, reliance

is placed on the latest combined decision of Hon'ble ITAT, Indore Bench, Indore, in the case of DCIT, Circle -1(1), Ujjain vs. Smt. Gurucharan Kaur in I.T.A. No. 489/Ind/2017 for assessment year 2013-14 and ACIT-2(1), Ujjain vs. Shri Jaswinder Singh in I.T.A. No. 490/Ind/2017 for assessment year 2013-14. In these cases, the CIT(A) had confirmed the application of net profit rate of 3.5%. However, the rejection of books of accounts have not been found approved both by CIT(A) and Hon'ble ITAT. The relevant part of decision of Hon'ble ITAT is reproduced hereunder:-

*"Applying this ratio on the facts of the instant case, we find that similar type of business has been carried out i.e. sale of liquor. Purchases are not doubted at any stage as they are through Excise Department controlled by the Government. Quantitative details have been filed for all the purchases. Books of accounts are duly audited. Better Net profit rate has been declared i.e. 3.47% as against 3.17% in the immediately preceding financial year. In these given facts and circumstances of the case we find no inconsistency in the well-reasoned finding of fact by Ld. CIT(A) applying net profit rate of 3.5%. We accordingly confirm the view of Ld. CIT(A) of deleting the addition of suppressed sales of Rs. 3.09 crores and dismiss revenue's appeal."*

*But, in the instant case, the rejection of books of accounts has been confirmed after distinguishing the facts of the various case laws cited by the appellant. Therefore, in my considered opinion, the application and confirmation of NPR @ 3.5% shall be the most appropriate and reasonable. The AO is accordingly directed to recalculate the additions so as to, delete the balance addition. The grounds of appeal are partly allowed."*

6. Before us, learned Representatives of both sides supported respective orders in their favour i.e. while Ld. DR for revenue supported AO's order, Ld. AR for assessee supported CIT(A)'s order.

7. We have considered rival submissions of both sides and perused the orders of lower-authorities. After a careful consideration, we find that the AO rejected books of account by invoking section 145(3) and the CIT(A) has upheld such rejection. However, after rejection of books, the AO estimated gross-profit @ 10% of sales as against which the CIT(A) estimated net profit @ 3.50%. While making such substitution, Ld. CIT(A) has made a vehement discussion on both sides i.e. Why the AO's action in applying Gross-Profit rate of 10% is not justified and Why application of 3.50% Net Profit rate is justified in assessee's case. On perusal of order of CIT(A), we find that he has given a detailed and reasoned analysis with the support of decided cases of ITAT, Indore. During hearing, we also confronted Ld. AR as to the

assessee's own past history of 'net profit'. In reply, Ld. AR submitted that this is the first-year of business and opening stock shown in Trading A/c is Nil. When we further searched the documents filed in Paper-Book, we find that in Clause No. 40 of Form No. 3CD (Tax Audit Report) at Page No. 24 of Paper-Book, the tax auditors have mentioned "0" against turnover, gross-profit and net-profit of preceding year, which shows that past data is not available. Faced with this situation, we do not find any fallacy, infirmity or perversity in the order of CIT(A) so as to warrant our interference. Therefore, the order of CIT(A) is upheld.

**8. Resultantly, this appeal of revenue is dismissed.**

*Order pronounced in the open court on 31.10.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 31.10.2023.

CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*