आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 1080 & 1081/Kol/2023
Assessment Years: 2013-14 & 2014-15

Mohmmad Mukul (PAN: BGQPM 5502 C)	Vs.	ITO, Ward-3(2), Malda
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.12.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05 .01.2024
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri S Datta, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 21.08.2023 for the AY 2013-14 & 2014-15.

2. The only issue raised in the various grounds of appeal is against the part confirmation of addition @ 8% of total credits as appearing in the bank as well as cash transactions of Rs. 1 Lakh or above.

3. Facts in brief are that the assessee is in the business of dealing with fish wholesale and retail business and has not filed any return of income as per the information available with the Department. It was found that the assessee has entered into huge cash transactions during the year. Accordingly the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 26.03.2021. Thereafter the AO framed the assessment by adding the aggregate of all the transactions which comes to Rs. 11,99,73,610/- to the income of the assessee which comprised of cash deposits in saving bank account of Rs. 8,62,40,605/- and amount per AIR-001 of Rs. 3,37,33,000/- on account of cash transactions of Rs. 1 Lakh or above and as per CIB-181.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by applying rate of 8% on the total turnover of the assessee.

5. The Ld. Counsel, at the outset, submitted that the issue involved in the present appeal is squarely covered by the decision of Co-ordinate Bench of Kolkata in the assessee's own case in ITA No. 478/Kol/2022 for AY 2017-18 vide order dated 27.03.2023. The Ld. Counsel for the assessee submitted that the Co-ordinate Bench has directed to apply 2% of total turnover. The Ld. Counsel for the assessee submitted that in the current year also the said decision may be followed and the AO may be directed to apply 2% on the total amount instead of 8% as directed by the Ld. CIT(A).

6. After hearing the rival contentions and perusing the material on record, we find that the facts in the present year are substantially similar as involved in AY 2017-18 wherein the Co-ordinate Bench has already decided the issue in ITA No. 478/Kol/2022 for AY 2017-18 and directed a profit rate of 2% of total suppressed turnover. The operative part is extracted as under:

> *"7. The second issue raised by the assesse in ground no. 4 and 5 is against the confirmation of application of Gross profit @ 7.96% on the suppressed turnover of Rs. 8,73,64,257/- thereby upholding the AO on this issue whereas the profit shown by the assessee during the year is only 1.47%.*

8. Facts qua the issue has been narrated in the foregoing paras. The limited issue before us is whether the profit to be applied on the fresh turnover would be 7.96% or lesser profit as claimed by the assessee. We have examined the audit report furnished by the assessee and found that NP has been disclosed at 1.47%. The assessee also relied on the various decisions to support his contention that the rate of profit as disclosed by the assessee in the audited annual accounts should be applied to the undisclosed/suppressed turnover. After considering the facts on record and order of authorities below we find that it would be reasonable if the rate of 2% is applied on the suppressed turnover of Rs. 8,73,64,257/- as the 7.96% is excessive and unreasonable. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to apply rate of 2% of the suppressed turnover. Consequently the ground nos. 4 and 5 are partly allowed.

9. In the result, the appeal of the assessee is partly allowed."

We therefore respectfully following the decision of Co-ordinate Bench as stated above modify the order of Ld. CIT(A) by directing the AO to apply a profit rate of 2% on the total amount. The appeal is partly allowed.

7. Now we shall take in ITA No. 1081/Kol/2023 for AY 2014-15 and find that the issues are similar to one as decided by us in ITA No. 1080/Kol/2023 for AY 2013-14.Since we have decided the similar issue in ITA No. 1080/Kol/2023 for AY 2013-14 in favour of the assessee, therefore our findings/decisions in the above ITA No. 1080/Kol/2023 would, mutatis mutandis, apply to this appeal as well. Consequently this appeal is also partly allowed.

8. In the result, both the appeals of the assessee are partly allowed.

Order is pronounced in the open court on 5th January, 2024

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 5th January, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mohmmad Mukul, Puratuli Bandh Road, Barakarkhana, Englishbazar, Malda-732101
2. Respondent – ITO, Ward-3(2), Malda
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata