

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'H': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.8270/Del/2019
(Assessment Year: 2017-18)**

ACIT, Central Circle 28,
NewDelhi.

vs.

Yogender Mohan Rustagi,
288, Kucha Ghasi Ram,
Chandni Chowk,
Delhi – 110 006.

(PAN : AGUPR9629J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vibhu Gupta, Advocate
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 08.01.2024

Date of Order : 10.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. CIT (Appeals)-29, New Delhi dated 05.08.2019 for the assessment year 2017-18.

2. The grounds of appeal taken by the Revenue read as under :-

“1. On the facts and circumstances of the case, the Ld. CIT (A) has erred in restricting the addition to the extent of Rs. 12,29,578/- as against the addition on account of unaccounted sales of Rs. 3,56,92,208/- arrived during the remand proceedings from the seized material.

2. On the facts and in the circumstances of the case the Ld CIT (A) has erred while considering & estimating averaged

gross profit of last three years @ 3.18% on the unaccounted sales observed from seized material to the tune of Rs. 3,86,92,208/- and ignoring the fact emerged from incriminating material i.e. unaccounted sale proceeds that the assessee was engaged in unaccounted sales.

3. That the grounds of appeal are without prejudice to each other.”

3. Brief facts of the case are that the AO found that during the course of search action at the residential premise of the assessee, certain loose papers were found which were annexured as A-7 and the same were seized. These loose papers contained unaccounted sale of the assessee for the year under consideration. Since the assessee failed to furnish any explanation in this regard, therefore the AO made addition of the same on account of unaccounted sale. However, during the appellate proceedings before the Id. CIT (A), the assessee has submitted that the total of the transactions as per pages 1 to 143 of Annexure A-7 comes to Rs.3,86,65,998/- as against Rs.5,02,53,749/- taken by the AO.

4. Upon assessee's appeal, Id. CIT (A) found that as per the remand report, the unaccounted sales is of Rs.3,86,65,998/-. However, the Id. CIT(A) was of the opinion that entire sales cannot be taken as income and only profit element embedded there is to be brought to tax. Accordingly, he granted relief by directing that only percentage of profit can be taxed. Id. CIT (A) has concluded as under :-

“ I have considered the facts and circumstances of the case, submission of the appellant and perused the AO's order. I find merit in the argument of the appellant that the profit earned on the transactions of sale is to be taxed and not the gross sale transaction. In this regard, the appellant has relied upon various judgements of Hon'ble Court/ ITAT in its submission (supra). Under these circumstances, I find that the average profit of last 3 years of the appellant comes to 3.18%, therefore, the AO is directed to take the figures profit (3.18%) on the unaccounted sale of Rs.3,86,65,998/- which comes to Rs.12,29,578/-. In view of above discussion, the AO is directed to restrict the addition to Rs 12,29,578/- but the balance addition is directed to be deleted.”

5. Against the above order, the Revenue is in appeal before us. We have heard both the parties and perused the records.

6. Ld. DR for the Revenue submitted that there is no explanation about the source of purchase. Hence, he submitted that ld. CIT (A) has erred in granting relief.

7. Ld. Counsel of the assessee relied upon the order of the ld. CIT (A).

8. Upon careful consideration, we find that ld. CIT (A) is correct in the observation that entire amount of unaccounted sales consideration is not to be taxed and only the profit embedded therein is brought to tax. Source of purchase is not the issue raised by the Revenue in grounds of appeal before us. Further, no such case has been made out by the AO. In the present case, unaccounted sales came to Rs.3,86,65,998/- and on the same, three years average profit was 3.18% which was sustained by the ld. CIT(A). We find that ld. CIT (A) order gets support from the decision of Hon'ble Gujarat

High Court in the case of CIT vs. President Industries 258 ITR 654 wherein the Hon'ble Court, while affirming the decision of the Tribunal restricting addition of income on the suppressed amount of sales to the extent of net profit, held as under :-

"Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales

9. Accordingly, we find that on the touchstone of aforesaid decision of Hon'ble Gujarat High Court, there is no infirmity in the order of the Id. CIT(A). No contrary order has been brought to our notice, hence we uphold the order of the Id. CIT (A).
10. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on this 10th day of January, 2024.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 10th day of January, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-29, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**