

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 1002 & 1003/KOL/2023
Assessment Years: 2015-2016 & 2016-2017**

**Vineet Agarwal,.....Appellant
C/o. Shree Shakambari Emporium,
194, Jamunalal Bajaj Street, 1st Floor,
Burrabazar, Kolkata-700007
[PAN:APTPA9425R]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-43(1), Kolkata,
3, Government Place (West),
Kolkata-700001**

Appearances by:

Shri Akkal Dudhwewala, FCA, appeared on behalf of the assessee

Smt. Madhumita Das, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing :November 21, 2023

Date of pronouncing the order: March 04, 2024

O R D E R

Per Shri Rajesh Kumar, Accountant Member:-

1. We first take **ITA No. 1002/KOL/2023** for A.Y. 2015-16. The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.07.2023, which is arising out of the order

dated 27.12.2017 under section 143(3) of the Income Tax Act, 1961 for A.Y. 2015-16 framed by Id. Income Tax Officer, Ward-43(1), Kolkata.

2. The issues raised in Grounds No. 1, 2, 3, 4 & 7 of this appeal are not pressed by the Id. Counsel for the assessee at the time of hearing. Therefore, the same are being dismissed as not pressed.

3. At the time of hearing, Id. Counsel for the assessee pressed Grounds No. 5 & 6, which are extracted below:-

“5. For that on the facts and in the circumstances of the case and without prejudice to the above, the Id. A.O. having estimated the total income by applying a profit rate to the gross receipts during the year, the Id. CIT(A) ought to have held that other addition/adjustment made by the AO to the tune of Rs.1,10,45,173/- on account of alleged un-reconciled purchases was unsustainable and thus deserves to be deleted.

6. For that on the facts and in the circumstances of the case and without prejudice to the above, the lower authorities grossly erred in making addition of Rs.1,10,45,173/- on account of un-reconciled purchases and the same deserves to be deleted in full”.

4. The common issue raised in these grounds of appeal as stated above is against the order of Id. CIT(Appeals) upholding the disallowance of Rs.1,10,45,173/- as made

by the ld. Assessing officer on account of bogus purchases by ignoring the fact that the books of account of the assessee has been rejected under section 145(3) of the Act and income has been estimated @8% of the total turnover.

5. The facts in brief are that the assessee in the business of export of garments and during the year filed his return of income on 31.03.2017 disclosing a total income of Rs.2,54,790/-. The case of the assessee was selected for limited scrutiny for two reasons, namely-

(i) Whether the value of exports and imports has been correctly shown in the return of income;

(ii) Whether duty drawback received has been correctly shown in the return of income.

The statutory notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer during the course of assessment proceedings called for various information and details from the assessee, which were duly furnished before the ld. Assessing Officer. However, ld. Assessing Officer concluded that the assessee has not shown the purchases and sales figures completely and correctly in his accounts and thus in the absence of any supporting documents regarding expenses

the AO estimated the income by applying @8% of the turnover, which comes to Rs.20,45,447/- and after allowing deduction of income already shown at Rs.3,14,638/-, an addition of Rs.17,30,809/- was made. The ld. Assessing Officer further observed from the revised Profit & Loss Account as extracted on page no. 3 that the assessee had undisclosed purchases to the tune of Rs.1,10,45,173/-, which were made by the assessee from undisclosed sources. The ld. Assessing Officer also noted certain discrepancies as per the revised Profit & Loss Account, vis-a-vis Profit & Loss Account furnished earlier. The ld. Assessing Officer also noted that notices under section 133(6) of the Act were sent to the various creditors however, till date of passing the order, no replies were received and finally an addition of Rs.1,10,45,173/- was made on account of undisclosed purchases in the assessment framed under section 143(3) vide order dated 27.12.2017.

6. In the appellate proceedings, ld. CIT(Appeals) simply affirmed the order of ld. Assessing Officer.

7. After hearing the rival contentions and perusing the material available on record, we find that though there were certain discrepancies in the books of accounts of the assessee in recording purchases and sales. The assessee has also extracted the balance-sheet and profit & loss account in the assessment order. We note that the

ld. Assessing Officer has rejected the books of account of the assessee under section 145(3) of the Act and thereafter in order to assess the income, ld. Assessing Officer applied the rate of 8% to the total turnover and thereby assessed the net profit at Rs.20,45,447/- and after allowing credit of profit already disclosed, net addition of Rs.17,30,809/- was made, which is not pressed before us. Now the issue for our consideration is only where the ld. Assessing Officer has estimated the income by applying the rate to the total turnover after rejecting the books of accounts whether the ld. Assessing Officer has jurisdiction/powers to make any other addition in respect of any other item of income, which may be wrong or not shown by the assessee. In our opinion, once the ld. Assessing Officer has estimated the income after rejecting the books of account, that means all the transactions and discrepancies stand discounted by estimating the said income meaning thereby that once the income estimated by applying the rate of turnover, no other addition can be made by the ld. Assessing Officer. The case of the assessee finds support from the several decisions of Hon'ble High Courts and Tribunal, which read as under:-

- (i) CIT -vs.- Aggarwal Engg. Co. (156 taxman 40) (Punjab & Haryana High Court);
- (ii) CIT -vs.- Bahubali Neminath Muttin (73 taxmann.com 100) (Karnataka High Court);

(iii) Indwell Construction -vs.- CIT (232 ITR 776) (Andhra Pradesh High Court);

(iv) CIT -vs.- Banwari Lal Banshidhar (229 ITR 229) (Allahabad High Court);

(v) ITO -vs.- M/s. Sanwaria Steel Pvt. :Ltd. (ITA No.2131/KOL/2013) (ITAT, Kolkata);

(vi) Suprakash Das -vs.- ITO (ITA No. 164/KOL/2013) (ITAT, Kolkata);

(vii) ACIT -vs.- Gourangalal Chatterjee Construction Pvt. Ltd. (ITA No. 760/KOL/2012) (ITAT, Kolkata);

(viii) Amplified Engineers -vs.-ACIT (ITA No. 757/KOL/2011) (ITAT, Kolkata).

8. In the case of CIT -vs.- Aggarwal Engg. Co. (156 taxman 40), Hon'ble Punjab & Haryana High Court has held that where once net profit rate was applied on contract receipts of assessee for estimating the income from contract work, no further addition was called for in respect of purchases and introduction of cash.

8.1. Similarly in the case of Bahubali Neminath Muttin (supra), Hon'ble Karnataka High Court has held that where books of account of the assessee had been rejected by Assessing Authority, same books of account could not be relied upon in an addition on account of trade creditors and also for arriving at closing stock.

8.2. The Hon'ble Andhra Pradesh High Court in the case of Indwell Constructions (supra) has held at the same ratio by holding that where books of accounts of assessee-firm, which was doing contract business, were rejected and its income was estimated by applying proviso to section 145, no separate addition on account of interest and salary paid to partners could be made to such estimated income by the ld. Commissioner under section 263.

9. In view of the ratios laid down by various Hon'ble High Courts and coordinate benches, we are inclined to hold that the addition made by the ld. Assessing Officer on account of concealment of purchases is not sustainable in the eyes of law and, therefore, the order passed by the ld. CIT(Appeals) on this issue is wrong and contrary to the legal position as discussed above. Consequently we set aside the order of ld. CIT(Appeals) and direct the ld. Assessing Officer to delete the addition.

10. In the result, the appeal of the assessee being ITA No. 1002/KOL/2023 for A.Y. 2015-16 is partly allowed.

11. Now we take **ITA No. 1003/KOL/2023** for A.Y. 2016-17.

12. The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 08.08.2023, which is arising out of the order dated 03.12.2018 under section 144 of the Income Tax Act, 1961 for A.Y. 2016-17 framed by ld. Income Tax Officer, Ward-43(4), Kolkata.

13. The issues raised in Grounds No. 1, 3, 4 & 5 are not pressed by the ld. Counsel for the assessee at the time of hearing. Therefore, the same are dismissed as not pressed.

14. The issue raised in Ground No. 6 is against the confirmation of addition of Rs.10,63,035/- by the ld. CIT(Appeals) as made by the ld. Assessing Officer on account of Duty Draw Back received by the assessee based only on the export import summary data.

15. The facts in brief are that the assessee filed his return of income on 31.03.2017 disclosing total income

of Rs.5,70,840/-, which was selected for limited scrutiny for two reasons:-

(i) whether value of exports and imports has been correctly shown in return of income;

(ii) whether duty drawback received has been correctly shown in the return of income.

16. The ld. Assessing Officer estimated the income by applying 8% of the total turnover in the same manner as in A.Y. 2015-16. Under the similar facts and circumstances, ld. Assessing Officer made an addition of Rs.13,68,946/- by estimating the profits/income @ 8% of the turnover. The assessee has already shown net profit at Rs.6,20,837/-. Therefore, the concealment of income (Rs.13,68,946/- minus Rs.6,20,837/-) i.e. Rs.7,48,109/- was made by the ld. Assessing Officer. The said addition was not pressed at the time of hearing. However, the ld. Assessing Officer made one more addition of Rs.10,63,035/- on account of duty draw back received by the assessee from the Customs Department, which according to the ld. Assessing Officer was not offered for taxation.

17. The ld. CIT(Appeals) affirmed this addition by simply dismissing the appeal of the assessee.

18. After hearing the rival submissions and perusing the material available on record, we find that the legal issue in respect of this appeal is same as has been

decided by us in A.Y. 2015-16 in ITA No. 1002/KOL/2023 above, wherein, we hold that where the books of account of the assessee has been rejected and addition is made on estimation by applying 8% of the total turnover, no other addition can be made by the ld. Assessing Officer based on the said books of account. Similarly in the instant case also, the ld. Assessing Officer has estimated the income at the rate of 8% of the turnover, then other addition can be made. Accordingly the addition made by the ld. Assessing Officer on account of Duty Draw Back of Rs.10,63,035/- cannot be sustained. Considering totality of the facts and circumstances of the case as discussed above in ITA No. 1002/KOL/2023, we set aside the order of ld. CIT(Appeals) and direct the ld. Assessing Officer to delete the addition.

19. In the result, the appeal of the assessee being ITA No. 1003/KOL/2023 is partly allowed.

20. To sum up, both the appeals of the assessee being ITA Nos. 1002 & 1003/KOL/2023 are partly allowed.

Order pronounced in the open Court on 04/03/2024.

Sd/-

**(Sanjay Garg)
Judicial Member**

Sd/-

**(Rajesh Kumar)
Accountant Member**

Kolkata, the 4th day of March, 2024

Copies to : (1) Vineet Agarwal,
C/o. Shree Shakambari Emporium,
194, Jamunalal Bajaj Street, 1st Floor,
Burrabazar, Kolkata-700007

(2) Income Tax Officer,
Ward-43(1), Kolkata,
3, Government Place (West),
Kolkata-700001

(3) Commissioner of Income Tax(Appeals),
National Faceless Appeal Centre (NFAC), Delhi;

(4) *Commissioner of Income Tax-;*

(5) *The Departmental Representative*

(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.