

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD  
(Through virtual hearing)**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.240/Hyd/2024		
Assessment Year: 2016-17		
Mahender Reddy Ganji, House No.1-600/4, Near Petrol Pump, Upparapalle, Kesamudram, Warangal, Telangana.  PAN : BGLPG6211P.	Vs.	The Income Tax Officer, Ward – 1, Warangal, Hanamkonda.
(Appellant)		(Respondent)
Assessee by:		Shri Pradeep Raj Kuna, C.A.
Revenue by:		Shri Mookambikeyan, Sr.AR
Date of hearing:		02.04.2024
Date of pronouncement:		02.04.2024

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2016-17 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.31.01.2024 invoking proceedings under section 147 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. *The Order of the Learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of the case.*

2. *The learned Commissioner erred in rejecting the books of accounts and in estimating the income of the Appellant at 8 percent on the total Turnover.*

3. *The learned Commissioner erred in adopting an adhoc rate and not applying a justifiable rate of net profit considering the nature of business and other facts.*

4. *The learned commissioner ought to have appreciated that it almost not possible to prove the sales receipts considering the nature of business.*

5. *The learned commissioner erred in accepting the contention of the Id AO that purchase bills, confirmation from party, tally extract narrating bank statement are not submitted during the course of proceedings.”*

3. The brief facts of the case are that the assessee has not filed his return of income for A.Y.2016-17 voluntarily u/s 139 of the Act. Subsequently, on verification of the information received from the Department, it was noticed that the assessee has deposited an amount of Rs.1,23,04,400/- in cash in the bank account(s) during the FY 2015-16 relevant to AY 2016-17. Therefore, the case was reopened by issue of Notice u/s 148 of the I.T.Act on 23.03.2021. In response to notice issued u/s 148 of the Act, the assessee filed his return of income on 13/05/2021 declaring total income at Rs.2,38,260/-. Subsequently, notice u/s 142(1) of the Act was issued to the assessee calling certain information.

3.1 In response to Notice issued u/s 142(1) of the Act, the assessee filed submission to explain that cash deposited in the bank account represents Cash Sales of retail Chicken Center under the name of M/s GMR Chicken Centre. Further, the assessee furnished copy of Balance Sheet and Profit & Loss account. On perusal of Profit & loss account submitted by the assessee, Assessing Officer noticed that Gross Sales have been reported at Rs.2,01,11,181/- comprising Chicken Sales of Rs.2,00,68,260/- and Discount of Rs.42,921/-.The net profit and Total Income has been reported at Rs.2,38,258/-. The return has been filed reporting total income at Rs.2,38,260/-. Accordingly, the income was reported at 1.18 % of gross turnover which was very low considering nature of business of the assessee. Further, complete details of claim of Purchases and Sales have not been furnished. Hence, the Assessing Officer rejected the books of accounts and has estimated the income as per section 145(3) of the Act. Therefore, considering the nature of business and deficiency in details maintained by the assessee, the total income of the assessee was estimated @ 8% of the total turn over of Rs. 2,01,11,181/-. Accordingly, a show cause notice was issued to the assessee. In response, assessee submitted that he was running a wholesale/ retail business of Chicken Center and purchases live Birds from the Suppliers and sold the same to the retail customers with the Gross Margin of 3% to 4%. In absence of complete supporting details, the submission of the assessee were not accepted by the Assessing Officer and he estimated the income of the assessee for the year under consideration at Rs.16,08,895/- ( 8% of Rs.2,01,11,181/-) and added to the total income of the assessee. Thereafter, initiated penalty proceedings u/s 271(1)(c) of the Act are hereby initiated

separately for concealment of income with reference to income estimated at Rs.16,08,895/-. Thus, the Assessing Officer completed the assessment and passed order u/s 147 r.w.s. 144B of the Act estimating the total income of the assessee at Rs.16,08,895/-.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, Id.AR has submitted that the Assessing Officer has not given any specific material reasons for rejecting the books of accounts as contemplated u/s 145(3) of the Act. It is the case that assessee has provided adequate details before the Assessing Officer in the form of purchase registers , sale registers , bank details and the account details in tally form. It was the contention of the assessee that the assessee has estimated the income on the basis of the sale made by the assessee during the assessment year which is in the range of 1.8% net and G.P. as 3.4%. It was also submitted that unless the books of accounts are rejected, the Assessing Officer cannot estimate the income of the assessee as done by the Assessing Officer.

6. Per contra, the Ld. D.R. has submitted that the present is not the case where the assessee has maintained the books of accounts. In fact, during the year under consideration, the assessee has deposited a huge cash of Rs.1.23 crores in the bank account. When the above said fact came to the notice of the Revenue, the proceedings u/s 147 were initiated as the assessee was a non-filer. The assessee during the assessment proceedings, has declared

1.86% as net. The assessee sought to justify non audit of accounts for strange reasons that the failure to maintain the books of accounts and non audit was on account of the fact assessee was a non-filer for the previous years, therefore, he has not maintained the books of accounts and therefore there is no question of auditing the books of accounts. It was submitted by the Ld. D.R. that the estimation made by the Assessing Officer @ 8% is quite fair as the Assessing Officer should have added the entire bank deposits to the income of the assessee instead of estimating the income by reducing the sale price . It was submitted that assessee had failed to produce evidence of sale made by the assessee before Assessing Officer / Ld.CIT(A).

7. In rebuttal, the learned Authorised Representative has submitted that no specific material ground was provided by the Assessing Officer for rejection of books of accounts and therefore, the action on the part of the Assessing Officer was incorrect.

8. During the course of arguments, the Bench has suggested to the assessee that instead of 8%, it will be appropriate if the net profit of the assessee, is quantified at 7% on estimation basis. In response, the learned Authorised Representative has submitted that the Assessing Officer for A.Y. 2012-13 in the same region, in the case of Khan Raheem and estimated the income of the trader of same locality at 4% of the turnover.

9. I have heard the rival contentions of the parties and perused the material available on record. Admittedly, the assessee

had deposited a sum of Rs.1.23 crore in the bank account and thereafter, when the above said fact came to the notice of the Department, the notice u/s 147 was issued to the assessee by the Assessing Officer after taking the approval from the competent authority. In response thereto, the assessee had filed the return of income declaring the total income of Rs.2,38,260/-. Subsequently, the Assessing Officer has issued a questionnaire and notice u/s 142(1) dt12.11.2021 asking for the following details (Page 2 of the assessment order).

1. Please furnish a detailed note on nature of your business and sources of your income for the FY 2015-16 relevant to AY 2016-17
2. Please furnish a copy of the return of income (filed if any), Form 26AS, P & L account, Balance Sheet and Audit report along with 3CB/3CD report for the FY 2015-16 relevant to AY 2016-17
3. Please furnish the copies of all bank statements held by you for the FY 2015-16 relevant to AY 2016-17

9.1. In response, the assessee had filed the submissions and explained that the cash deposits made in the bank represent the cash sales of retail Chicken Center under the name of "M/s. GMR Chicken Centre". The assessee has furnished copy of bank balance-sheet and Profit and Loss account. It is the contention of the assessee before me that the assessee has provided the documents which are available in volume 1 of the paper book at page 17-40. I have perused the documents and the other submissions in my view if the accounts of the assessee, have not been audited, then it may be presumed that the assessee must have maintained books of account however in the absence of audit of account, the presumption is to be

drawn against the assessee. It is not the case that the assessee was maintaining books of accounts and the same were duly maintained, then the question of audit is consequential to maintain the books of accounts. No evidence has been produced before me showing that the books of accounts as contemplated by law having turn over of more than Rs.1 crore has been maintained by the assessee.

9.2. In view of the above, I do not find any reason to accept the contention of the assessee that the Assessing Officer has failed to provide the material ground for rejecting the books of accounts. In my view, the books of accounts have not been properly maintained as required under law, then the Assessing Officer was right in rejecting the books of accounts. Accordingly, I am of the opinion that the books of accounts rejected by the Assessing Officer was in accordance with law.

9.3 Now coming to the estimation of the income made by the Assessing Officer, the Assessing Officer has estimated the income of the assessee on total turnover of Rs.2,01,11,181/- by applying the net profit of 8%. As against the above said 8%, the assessee has provided an identical case for the assessment year 2012-13, whereby the Assessing Officer in the same trade has estimated the income of the assessee at 4%. In my view, the estimation of income is required to be made either on the basis of the trade history or by citing the comparable instance or on the basis of the past and the subsequent history of the assessee. In the present case, there is no past history of the assessee, as the assessee was a non filler. For the subsequent, the assessee has filed the return of income, showing the

gross profit at 3 to 4% of the total turnover. There is no 143(3) order available on record or produced before me for subsequent years admitting the GP of 4%. Hence, to maintain the balance of equity and considering the totality of the facts and circumstances, I am of the opinion that it will be fair if the income of the assessee is estimated at 6% instead of 8% and thereby giving some benefit to the assessee. I am of the opinion that the assessee should get its account regularly audited and also maintained the books of accounts as of the sale and purchase of the chickens so that the correct profit can be estimated. The Assessing Officer is directed to estimate the income at 6% instead of 8%. In the light of the above, the appeal of the assessee is partly allowed.

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

Order pronounced in the Open Court on 2<sup>nd</sup> April, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 2<sup>nd</sup> April, 2024.

**TYNM/sps**

Copy to:

S.No	Addresses
1	Mahender Reddy Ganji, House No.1-600/4, Near Petrol Pump, Upparapalle, Kesamudram, Warangal, Telangana.
2	The Income Tax Officer, Ward – 1, Warangal, Hanamkonda.
3	Pr1.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches

5	Guard File
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*By Order*