



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.319/CTK/2023
Assessment Year : 2012-13

Sahabaj Khan, Bhadrak Egg Trader, Fish Market, Kacheri Bazar, Bhadrak	Vs.	Income Tax Officer, Bhadrak Ward, Charampa, Bhadrak.
PAN/GIR No.AQGPK 1248 L		
(Appellant)	..	(Respondent)

Assessee by : Shri Digant Das, Adv
Revenue by : Shri Charan Dass, Id Sr DR

Date of Hearing : 29/05/2024
Date of Pronouncement : 29/05/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 21.6.2023 in Appeal No.CIT(A), Cuttack/10264/2018-19 for the assessment year 2012-13.

2. Shri Digant Das, Id AR assisted by Debasmita Sethy and Sri Sourav Kumar Sahu, interns of Madhusudan Law University, Cuttack appeared for the assessee and Shri Charan Dass, Ld CIT DR assisted by Shri Sahil

Suman Dhir and Kumari Manaswani SSahoo, interns of Madhusudan Law University, Cuttack, appeared for the revenue.

3. The appeal filed by the assessee is delayed by 56 days. The assessee has filed condonation petition dated 16.10.2023, stating the reasons that as the assessee was seriously ill due to spinal problem and was advised not to move. On getting recovered from the illness, the assessee consulted his counsel to file the appeal and, therefore, there was delay of 56 days. It was prayed to condone the delay in filing the appeal. Ld Sr DR did not object to the condonation petition. After considering the condonation petition and hearing the parties, we are satisfied that there was reasonable cause in not filing the appeal within the stipulated period. We, accordingly, condone the delay of 56 days and admit the appeal for hearing.

4. It was submitted by Id AR that the assessee is a wholesale dealer in eggs. It was the submission that the impugned assessment year 2012-13 was the first year of business of the assessee. The assessee had a turnover of Rs.5,57,61,124/- and had declared gross profit of Rs.16,03,132/- and net profit of Rs.4,47,083/-. It was the submission that the net profit ratio was 0.8%. The assessee had not filed his return of income and the notice u/s.148 of the Act had been issued to the assessee as there was substantial cash deposit in the bank. It was the submission that the return was filed in response to notice u/s.148 of the Act. The books of account

were rejected on account of non-compliance of notices. It was the submission that consequently, the income of the assessee was estimated at 8% of the turnover. It was the submission that there was a disallowance of Rs.1,15,76,500/- towards unexplained cash credit. On appeal, the Id CIT(A) had deleted the addition representing the unexplained cash credit but had upheld the estimation of income at 0.08% of the total turnover. It was the submission that for the subsequent assessment year being 2013-14, the assessee had shown net profit ratio of 0.44%, for assessment year 2014-15, the net profit ratio of 0.20 %, which was accepted in scrutiny assessment u/s.143(3). For the assessment year 2015-16, the net profit ratio of 0.48%, and for the assessment year 2016-17, the net profit ratio of 0.82%. Ld AR has filed written submission as follows:

“...That the assessee begs to state that the assessee’s accounts are audited. The assessee declared a total turnover at Rs.5,57,61,124.00 which includes the credits/receipts in the bank deposit amounting Rs.5,49,96,531.00. For better appreciation with regards to nature and profit from the business the assessee is submitting the GP % and NP% declared by the assessee for 5 years, which is as follows:

Sl No	Asst.Year	Total turnover	Gross profit	Net profit	Gross profit ratio(%)	Net profit ratio (%)	remarks
1	2012-13	55761124.00	1603132.00	447483.00	2.87%	0.80%	Appeal pending
2.	2013-14	71927683.00	1061420.00	315700.00	1.48%	0.44%	Notice for asst. u/s.148 of the IT Act quashed by Hon’ble High

							Court of Orissa (copy enclosed)
3.	2014-15	178745449.00	1639414.00	354600.00	0.92%	0.20%	Ast.u/s.147/143(3) completed accepting the return figure declared by the assessee (copy enclosed)
4.	2015-16	124105360.00	4294120.00	594799.00	3.46%	0.48%	Return figure accepted u/s.143(1) of the IT Act
5.	2016-17	66128098.00	2114073.00	540587.00	3.20%	0.82%	Return figure accepted u/s.143(1) of the IT Act

From the above chart, it is quite clear that the wholesale business of eggs, the margin of the profit declared by the assessee year to year is from 0.20% to 0.82% (highest in the assessment year 2016-17)

Looking at the trend of business year to year as mentioned in the wholesale egg trading business, the net profit cannot be 8%. Therefore, it is humbly submitted that the net profit declared by the assessee at 0.80% may kindly be accepted."

5. It was the submission that the Assessing Officer has not considered any comparative case when estimating the income of the assessee. It was the submission that the addition as made by the AO and as confirmed by the Id CIT(A) is liable to be reduced and if estimation has to be made, in view of the various decisions and principles laid down by the Hon'ble Supreme Court, the assessee's past record or future record could have been considered for the purpose of estimation of income. It was the submission

that the addition as made by the AO and confirmed by Id CIT(A) is liable to be reduced.

6. In reply, Id Sr DR submitted that the assessee has not produced the books of account for examination and the books of account had rightly been rejected by the Assessing Officer. In regard to estimation of income at 8%, it was submitted by Id Sr DR that the provisions of section 44AD had been applied. When it was pointed out to Id Sr DR that the provisions of section 44 AD cannot be blindly applied, it was submitted by Id Sr DR that the Assessing Officer has not applied the provisions of section 44 AD of the Act to estimate the income at 8%. It was the submission that the order of the AO and that of the Id CIT(A) is liable to be upheld.

7. We have considered the rival submissions. A perusal of the assessment order clearly shows that there has been non-production of books of account and this has led to rejection of books of account of the assessee. We find no error in rejecting the books of account on account of non-production of the same before the Assessing Officer. However, coming to the issue of estimation of income of the assessee, the Assessing Officer has estimated the same at 8%. He had two option, (i) had to make comparative analysis on similar business, admittedly, this has not been done and (ii) had to consider the past and subsequent records of the assessee. Admittedly, this is the first year of business of the assessee and, therefore, the past records of the assessee are not available but the future

records were available, when the estimation was being done by the Assessing Officer. In fact for the assessment year 2014-15, scrutiny assessment has been done by the AO by accepting the returned figure declared by the assessee, which shows the gross profit ratio at 0.92% and net profit ratio at 0.20% of the turnover. The Assessing officer has not considered even this. In these circumstances, we are of the view that the estimation of income at 8% is not supported by any acceptable method. This being so, in the interest of justice, the Assessing officer is directed to estimate the income at 1% of the total turnover of the assessee. This is because the net profit ratio of the assessee varies between 0.20% to 0.82%. In these circumstances, we feel 1% net profit ratio would be reasonable

8. In the result, appeal of the assessee stands partly allowed .

Order dictated and pronounced in the open court on 29/05/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 29/05/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: Sahabaj Khan, Bhadrak Egg Trader, Fish Market, Kacheri Bazar, Bhadrak
2. The respondent: Income Tax Officer, Bhadrak Ward, Charampa, Bhadrak.
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack