

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.889/Bang/2024
Assessment year : 2017-18

Mahabub Husenasab Ronad, House No.24, Basti Oni, Annigeri. 582201. PAN : AUAPR 8727R	Vs.	The Income Tax Officer, Ward 1(1), Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prakash Shridhar Hegde, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	06.06.2024
Date of Pronouncement	:	19.06.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 18.03.2024 of the Addl./Jt.CIT(Appeals)-6, Mumbai for the AY 2017-18 on the following grounds:-

“ The Grounds mentioned hereinafter are without prejudice to one another.

1. That the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and circumstances of the case and in law so far as his order is prejudicial to the interest of the Appellant.
2. The learned CIT(A) has erred on facts and in the circumstances of the case and in law by upholding the view of the

learned Assessing Officer ('AO') who had arbitrarily held that the Appellant should be subjected to tax on income based on the Average Rate of Gross Profit for the Assessment Years ('AY') viz. AY 2016-17, 2017-18 and 2018-19.

3. The learned CIT(A) has erred on facts and in the circumstances of the case and in law by upholding the view of the learned Assessing Officer ('AO') who had arbitrarily held that the Appellant should be subjected to tax on income based on the Average Rate of Gross Profit for the Assessment Years ('AY') viz. AY 2016-17, 2017-18 and 2018-19 even when the nature of business of the Appellant had changed in the year under consideration.

4. The learned CIT(A) has erred in confirming the levy of interest amounting to Rs 1.47,036 under sections 234B and Rs 3,678 under section 234C of the Act though the same should not have been levied in the present situation.

That the Appellant craves leave to add to and/or to alter, amend, rescind, modify, the grounds herein above or produce further documents before or at the time of the hearing of this appeal.”

2. Briefly stated the facts of the case are that the assessee filed return of income on 02.08.2017 declaring total income of Rs.6,18,100 and claimed agricultural income as exemption to the extent of Rs.3,46,468. The case was selected for scrutiny and statutory notices were issued to the assessee. In response, the assessee submitted written submissions, copy of bank statement and monthwise opening balance, receipts, deposits, withdrawals and other expenses, closing balance, account statement obtained from Suguna Foods P. Ltd., details of exempt purchases, ledger account of Japna Comfeed India P. Ltd. etc. The assessee is a wholesale and retail dealer of live chickens (livestock) and purchases livestock of chickens from Kwaliti Animal Feeds P. Ltd., Belgavi and Suguna Foods P. Ltd., Coimbatore. From

the bank statements the AO noticed that assessee has deposited cash in his various bank accounts during the demonetisation period. He observed the following details:-

Particulars	AY 2016-17	2017-18	2018-19
Turnover	45,65,000	3,32,68,716	5,38,17,628
GP	17.08%	6.41%	8.33%

3. The AO computed the average GP rate @ 10.61% for above 3 years. The assessee was asked regarding lower GP, but assessee was unable to explain the same. Accordingly AO calculated difference of GP to the tune of Rs.13,98,432 and assessed income at Rs.20,16,532. Aggrieved the assessee filed appeal before FAA.

4. The Id. FAA issues various notices on different dates as set out in para 4 of his order and dismissed the appeal of assessee for non-prosecution observing that the AO has passed a detailed and speaking order requiring no interference. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR submitted that notices issued by the FAA was not served to the assessee, therefore assessee was unable to reply to the notices and he was also not well versed with income tax e-proceedings. He requested that if a chance is given to the assessee, he undertook to respond to the notices and substantiate the case of the assessee with evidence before the lower authorities.

6. The Id. DR relied on the order of lower authorities and objected to sending back the matter to lower authorities.

7. Considering the prayer of the assessee and in the interest of justice, we remit the issue to the CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 19th day of June, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 19th June, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.