

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 3135/MUM/2024
(A.Y.2016-17)

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| Ashok Anand Shetty C-3/305, Country Park, Datta pada, Borivali, Mumbai-400066. | Vs. | ITO Ward – 41(4)(1), Kautilya Bhavan, BKC Bandra East, Mumbai-400050. |
| PAN/GIR No. AOGPS7379E | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| Assessee by | Shri Haridas Bhat.AR |
| Revenue by | Shri Manoj Kumar Sinha, Sr. DR |
| सुनवाई की तारीख/Date of Hearing | 07.08.2024 |
| घोषणा की तारीख/Date of Pronouncement | 12.08.2024 |

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 147 r.w.s 144 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

GROUND I

On the facts and circumstances of the case, and in Law, CIT(A) NFAC erred in confirming an order u/s 147 r.w.s 144 of the Act passed by the NEAC (The A.O) ignoring the submission made by the appellant on 12.04.2024.

GROUND II

On the facts and circumstances of the case, and in Law, CIT(A) NFAC erred in confirming addition of Rs. 37,19,741/- by

estimation net profit of 9.39% of turnover i.e. average of last three years Net profit ratio

On the facts and circumstances of the case and in law the CIT and AO failed to appreciate the fact that:

a) AO adopted the method of estimating the profit since under the pretext that the assessee has not filed the return u/s 148, which is factually incorrect.

b) The assessee's financials were audited. The Tax auditor in his report had not made any adverse observations and qualifications AO resorted to estimation of income neither pointing out any defect in the books of accounts filed, nor rejecting the books of account.

c) During the AY 2013-14, AY 2014-15 and AY 2015-16, the assessee was engaged in different nature of business. During the impugned year, the assessee was engaged in trading of corn where turnover is high and profit margin are low. Thus NPR of earlier year are not comparable.

The appellant therefore prays that addition of Rs. 37,19,741/- may please be deleted.

GROUND III

On the facts and circumstances of the case, and in Law, CIT(A) NFAC erred in disallowing Rs. 2,00,000/- u/s 24(b) of the Act

On the facts and circumstances of the case and in law the CITA failed to appreciate the fact that:-

a) AO did not allow assessee's claim of deduction u/s 24(b) without making any express disallowance in the order passed u/s 144 r.w.s. 147 of the Act.

b) The CITA confirmed the addition stating that the assessee has not filed any return thus AO did not allow any such claim.

c) The assessee has claimed the said deduction in the ITR filed u/s 139(1) which was subsequently treated as invalid as well as in ITR filed u/s 148 of the Act.

The appellant therefore prays that disallowance of Rs. 2,00,000/- u/s 24(b) of the Act may please be deleted.

2. The brief facts of the case are that, the assessee is engaged in the business of trading of food grains and also receive salary from Shree Krishna Food Equipment and supplies Pvt Ltd. The assessee has filed the return of income for the A.Y 2016-17 on 17.10.2016 disclosing a total income of Rs.20,66,750/-. Subsequently, the Assessing Officer (AO) has received information about the business transactions and has reason to believe that there is income escaping the assessment and has issued notice u/sec 148 of the Act and there was no compliance. The AO on perusal of the financial statements found that the assessee has disclosed the income from salary of Rs. 15,00,000/- and income from business of Rs.7,66,751/-.The A.O find that the assessee has disclosed net profit @ 1.94% for the year under consideration in comparison to preceding year @ 11.94%, therefore notice u/sec 142(1) of the Act was issued to explain the reasons for sudden dip in the profits as compared to the earlier year. The AO find that, there is no compliance by the assessee to the notices issued nor any information was filed with corroborative evidence. Therefore the AO based on the information available on record has dealt on the facts of earning of net profit for the A.Y 2013-14, A.Y 2014-

15 & A.Y 2015-16 and observed that the net profit range is between 8.44% to 11.65% and computed average net profit percentage of three years which works out to @9.39%. Finally the A.O has computed business income @ 9.39% on the turnover of Rs.3,96,13,850/- which works out to Rs.37,19,741/- and assessed the total income of Rs.52,19,740/- and passed the order u/sec 147 r.w.s 144 r.w.s 144B of the Act dated 23.09.2021.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A), where the CIT(A) considered the grounds of appeal, findings of the AO and submissions of the assessee and called for various details. Whereas the CIT(A) has issued final notice dated 05.04.2014 asking the assessee to file the details before CIT(A) on or before 12.04.2014. The CIT(A) find that the assessee has not filed any details, hence considering the information available on record has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed the appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the submissions of the assessee filed in the course of appellate hearings

and details filed on 12-04-2024. Further the Ld.AR submitted that the assessee during the F.Y.2015-16 was engaged in the business of wholesale trade and the profit margin in wholesale trade is very nominal and therefore cannot be compared to earlier years, where the assessee was engaged in the retail business. The Ld.AR mentioned that the assessee has a good case on merits and shall substantiate with the material evidences and supported the submissions with the factual paper book and the Ld.AR prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld. AR that the CIT(A) has erred in sustaining the addition made by the AO overlooking the submissions made by the assessee in lieu of the notice issued on 06.04.2024 to file the reply on or before 12.04.2024. The Ld.AR has demonstrated the information and details filed before the CIT(A) on 12.04.2024, which is not disputed and was not considered by the CIT(A). Further the Ld.AR submitted that the assessee in the F.Y.2015-16 was engaged in the business of wholesale food items and therefore the profit margin based on the Turnover/volume will be

lower and the AO comparing with the net profit rate of earlier years, where the assessee was engaged in the retail trade and the profit margin differs. The Ld.AR submitted that the assessee has a good case on merits and shall substantiate with material evidences that the assessee's wholesale business profit margin is between 2% to 3%. Therefore, we considering the facts, circumstances and the principles of natural justice, shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. And we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced, in the open court on 12.08.2024

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 12/08/2024
KRK

Copy of the Order forwarded to:

1. The Appellant,
 2. The Respondent
 3. The CIT(A)-
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai