

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.2156/Del/2016
(ASSESSMENT YEAR 2011-12)**

Mukesh Kumar 126/26, Subhash Nagar Sonapat-131001 PAN:ATDPK3600Q (Appellant)	Vs.	Income Tax Officer Ward-2 Sonapat (Respondent)
---	-----	--

Assessee by	Dr. Rakesh Gupta, Adv. and Sh. Somil Aggarwal, Advocate
Respondent by	Sh. Anshul, Sr. DR

Date of Hearing	29/05/2024
Date of Pronouncement	14/08/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), Rohtak, ["Ld. CIT(A)", for short], dated 12/02/2016.
2. The brief facts of the case are, assessee filed his return of income on 22/09/2011 declaring an income of Rs.2,99,803/-. Subsequently, the case of the assessee was manually selected for scrutiny and notices u/s 143(2) and 142(1) along with the questionnaire were issued and served on the assessee. In response,

the AR of the assessee attended the proceedings and submitted copy of the audited balance sheet, audited report, debtors and creditors conformations. During the assessment proceedings, the Assessing Officer observed that assessee had declared certain purchases from Jagat Agro Commodities Pvt. Ltd. and REI Agro Ltd. and sold to Tanna Agro Impex Pvt. Ltd. and Rajiv Kumar and Rishav Kumar. Further, he observed that the sundry debtors also includes certain amount as Advances from Deepak Enterprises and Fortune Rice Ltd. Since, there were no response to queries raised by the Assessing Officer, notice u/s 133(6) of the Act were issued and replies were received from the above parties. The Assessing Officer analyzed the transactions with the above said parties. The Assessing Officer observed certain discrepancies while reconciling the information submitted by the respective parties and he observed certain discrepancies in the substantial transactions in bank statement submitted by the assessee and undisclosed bank account, the same was confronted with the AR of the assessee. Since, no response explanation/reasons were provided by the assessee, the Assessing officer proceeded to estimate the net profit at 20% on the total amount credited in assessee's bank account and as a result net profit of Rs.22,14,87,055/- from undisclosed business transaction was taxed in the hands of the assessee, therefore, the addition was made to the returned income of the assessee.

3. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A)-Rohtak and filed grounds of appeal and additional evidences in support of his contentions, the additional evidences were remanded to Assessing Officer and assessee did not submit his reply to the AO queries till the last week of March, 2014 due to limitation. The Ld. CIT(A) after analyzing the remand report and additional evidences submitted by the assessee, he dismissed the appeal filed by the assessee with the observation that assessee was not able to controvert the findings of the AO at the assessment and remand stage. Even during appellate proceedings, except for stating that he was a commission agent, he has brought no evidence on record that he has not traded in food grains. He also observed that the tax audit report clearly states that he also trader in food grains. Accordingly, he sustained the additions made by the AO.

4. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assessing the net profit of assessee at Rs.20,14,87,055/- on the basis of deposits in bank account and further erred in treating the transactions in bank account as unexplained u/s 69 and that too by recording incorrect facts and findings and without observing the principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assessing the income of assessee at Rs.20,14,87,055/- and treating the bank transactions as unexplained u/s 69 is bad in law and against the facts and circumstances of the case.

3. That without prejudice to the above, estimation of net profit @20% is highly excessive and unreasonable.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in rejecting the books of accounts of assessee and that too without any basis.

5. That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

5. At the time of hearing, the Ld. AR submitted that cash deposits recorded by the AO is not proper and he filed a copy of the bank statement to submit that there are errors in bank account since, there was no proper representation from the assessee side, during the assessment proceedings as well as remand proceedings, he prayed that issue may be remitted back to the file of AO to verify the additional evidences submitted before Ld. CIT(A).

6. On the other hand, the Ld. DR relied on the findings of the lower authorities and submitted that assessee has not cooperated during the assessment as well as remand proceedings. He objected to the submissions of the Ld. AR for giving one more opportunity to the assessee.

7. Considered the rival submissions and material placed on record, we observed that the Assessing Officer has analyzed purchase as well as deposits declared by the assessee in his financial statement and the Assessing Officer could not get proper documents for completing the assessment. Even during remand proceedings, the assessee could not file the information as called for by the Assessing Officer. Considering the additions proposed by the

Assessing Officer which is nothing but estimation of income on the gross deposits made by the assessee as assessee could not utilized the opportunities during assessment as well as remand proceedings. In our considered view, assessee should be given one more opportunity to meet the ends of justice. We are inclined to remit this issue back to the file of jurisdictional AO with the direction to reconcile the bank deposits in the bank statement as well as books of account of the assessee and we direct the Assessing Officer to do proper comparable study with the nature of business of the assessee and do the proper estimation as per law after giving proper opportunity of being heard to the assessee.

8. We strongly direct the assessee to represent his case without taking unnecessary adjournment and cooperate with the Assessing Officer to complete the assessment.

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

Order pronounced on 14th August, 2024.

Sd/-

(MS. MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 14/08/2024

Pk/sps

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI