

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - C” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.1407/Bang/2024
Assessment Year : 2016-17

Shri. Pasura Subbaiah Muthanna, 329, 5 th C Cross, Arakere Mico Layout, 1 st Stage Near Samadhana, Bannerghatta Road, Bengaluru – 560 076. PAN : AIGPM 2581 C	Vs.	ITO, Ward – 4(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K Kiran Kumar, Advocate
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	29.08.2024
Date of Pronouncement	:	02.09.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the Order of NFAC dated 29.05.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2016-17.

2. The solitary issue that is raised reads as follows:

“The National Faceless Appeal Centre, instead of accepting the profit and gain from business returned at Rs.7,25,000, being 6.8455% of the turnover of Rs.1,05,90,913(both declared and undeclared), erred in directing the Assessing Officer to adopt profit at 15% on the undeclared turnover of Rs.96,40,913/-”

3. Brief facts of the case are as follows:

Assessee, an individual, is engaged in the business of transport of goods. For the Assessment Year 2016-17, the return of income was filed on 14.03.2017 declaring total income of Rs.7,34,970/-. The assessment was selected for limited scrutiny under CASS for examination whether the contract receipt / fees has been correctly offered for tax. The AO issued notice under section 142(1) of the Act, directing the assessee to explain why he had declared only receipt of Rs.9,50,000/- whereas on verification it is noticed from Form 26AS that the total contract receipts during the relevant year was Rs.1,05,90,912/-. In response to the notice, assessee filed reply by stating that there was an error in the original return filed by the ITP. It was stated that assessee accepts the mistake that the contract receipts is Rs.1,05,90,912/- as noted in Form 26AS instead of Rs.9,50,000/- declared in the return of income. It was further stated that assessee is ready to offer net profit / taxable profit upto 8% of the gross receipts to Rs.1,05,90,912/-. The AO was of the view that the request of the assessee to tax at 8% on the turnover is not reasonable and completed the assessment under section 143(3) of the Act vide Order dated 19.12.2018. In the said Assessment Order, the AO added a sum of Rs.28,92,272/- being 30% of the total undeclared turnover of Rs.96,40,912/- (Rs.1,05,90,912 – Rs.9,50,000) as estimated income under the head “Profit and Gains from Business / Profession”.

4. Aggrieved by the assessment completed, assessee preferred appeal before the FAA. Before the FAA, it was contended that business income can be determined on flat rate basis under section 44AD of the Act. Hence, it was contended that the income which the assessee declared at Rs.7,25,000/- worked out to 6.84% on the total contract receipts of Rs.1,05,90,912/- was reasonable and fair. It was submitted that AO's assessment of the same at 30% is unreasonable and on the higher side. The CIT(A) partly allowed the appeal of the assessee by reducing the profit that is to be adopted at 15% on the undeclared turnover instead

of 30% as estimated by the AO. The relevant finding of the CIT(A) reads as follows:

“7.3) I have gone through the facts of the case and the submissions of the appellant. As per the provisions of Section 44AB every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed Rs.1 crore in any previous year, get his accounts of such previous year audited. In the instant case, the total gross receipts of the appellant exceeded Rs.1 crore and as such he was bound to get his accounts audited. Without doing so, the appellant has estimated the income of Rs.7,25,000/- which is @ 6.84% on total gross receipts of Rs. Rs.1,05,90,912/-.

The AO on the undeclared receipts of Rs.96,40,912/- estimated the profit @ 30% and made addition of Rs.28,92,274/-. The appellant has declared the gross profit in his returns, which is tabulated as under:

Sl.No.	AY	Gross Turnover in Rs.	Net Profit	% of profit declared
1	2014-15	92,880	20,000	21.53%
2	2017-18	1,32,55,955	10,93,391	8.24%
3	2018-19	1,62,47,629	12,99,811	8%

For the year under consideration, as the assessee himself has declared income @ 6.84% taking into consideration the entire gross receipts of Rs.1,05,90,910/-. the estimation made by the AO @ 30% on undeclared turnover of Rs.96,40,912/-appears to be high, especially in the line of hiring of transport vehicle business. Hence it would be justifiable if the profit is adopted @ 15% on the undeclared turnover of Rs.96,40,912/- Accordingly, the AO is directed to adopt profit @ 15% on the undeclared turnover of Rs.96,40,912/-. This ground is partly allowed.

8.0) In the result, the appeal is partly allowed.”

5. Aggrieved by the FAA's Order, assessee has filed the present appeal before the Tribunal. The learned AR reiterated the submissions made before the CIT(A) that estimation is to be adopted at 8% since for Assessment Years 2014-15, 2017-18 and 2018-19 the net profit rates were estimated at 8.24% and 8%.

6. The learned Standing Counsel supported the Orders of the AO and CIT(A).

7. I have heard the rival submissions and perused the material on record. Assessee in the return of income had declared total income of Rs.7,34,970/-. The income under the head "Profit and Gains from Business / Profession" was declared at Rs.7,25,000/- as under :

<i>Particulars:</i>	<i>As in Form ITR 4; in Rupees:</i>
<i>Gross receipt</i>	<i>9,50,000</i>
<i>Gross profit</i>	<i>9,50,000</i>
<i>Expenses</i>	<i>2,25,000</i>
<i>Net profit</i>	<i>7,25,000</i>

8. During the course of assessment proceedings, assessee admitted that gross receipts from the business of transport of goods is Rs.1,05,90,912/- as noted in Form 26AS. It is the claim of the assessee that income of Rs.7,25,000/- at the flat rate of 6.84% was declared after taking into account the various expenses of taking transport motor vehicle on hire and other expenses. It is the submission of the assessee that the AO has arbitrarily arrived at Rs.36,17,274/- (i.e., declared income of Rs.7,25,000/- + impugned income of Rs.28,92,274/- being 30% of the undeclared gross receipt of Rs.96,40,913/-). It is further submitted that NFAC / FAA's Order reducing the net profit rate to 15% which comes to Rs.14,46,137/- is also on the higher side.

9. I notice that the net profit rate subsequent to the FAA's Order is at 20.5% after taking into consideration the declared income of Rs.7,25,000/-. It is an admitted fact (which is also noted by the AO) that for Assessment Years 2014-15 and 2018-19 in assessee's case, income was declared on a presumptive basis under section 44AD of the Act (8% of the gross receipts). For Assessment Year 2017-18, on a gross turnover of Rs.1,32,55,955/- assessee had declared a net profit of Rs.10,93,391/- i.e., @ 8.24%. For Assessment Year 2017-18, the books of accounts were audited under section 44AB of the Act. Therefore, the figures for Assessment Year 2017-18 are more dependable and can be relied on. The assessee was carrying on the same line of business and was having gross receipts more or less of the same range for the relevant Assessment Year as well as in the Assessment Year 2017-18. Taking into account the expenses incurred for hiring transport of vehicle from others for the assessee's business of transportation of goods, I am of the view that the net profit rate of 8.24% declared in the return of income and accepted by the AO for Assessment Year 2017-18 needs to be adopted in this year also. Accordingly, I direct the AO to adopt a net profit rate of 8.24% on the gross receipts of Rs.1,05,90,912/- for the relevant Assessment Year. It is ordered accordingly.

10. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 02.09.2024.

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Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.