

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.475/Kol/2024
Assessment Year: 2013-14

GNG Exports.....Appellant

202, Lords,
7/1, Lord Sinha Road,
Rabindra Sadan,
Kolkata – 700071.

[PAN: AACFG59994P]

vs.

ACIT, Circle-33, Kolkata..... Respondent

Appearances by:

Shri Ramesh Kumar Patodia, Advocate, appeared on behalf of the assessee.

Shri Vineet Kumar, Addl. CIT- Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : July 09, 2024

Date of pronouncing the order : October 08, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 11.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal is aggrieved by the action of the Id. CIT(A) in directing the Assessing Officer to estimate the net profit of the assessee @ 0.77% of the total turnover.

3. The brief facts of the case are that during the assessment proceedings, the Assessing Officer noted that the assessee in its balance sheet had claimed an amount of Rs.21,32,57,979/- towards sundry creditors. On being asked to furnish the necessary details, the assessee furnished a list of persons to whom the aforesaid payment was

made. The Assessing Officer, thereafter, issued notices u/s 133(6) of the Act to various persons mentioned in the said list, calling for verification of the transactions. However, majority of the notices either remained unclaimed or the said persons did not make any compliance to the said notices. The Assessing Officer, therefore, held that it was difficult to ascertain the genuineness of the expenditure/sundry creditors claimed by the assessee. He, therefore, rejected the books of accounts of the assessee and estimated the net profit @ 2% of the turnover of the assessee and accordingly assessed the income of the assessee at Rs.52,86,307/- as against the loss claimed by the assessee of Rs.2,23,48,677/-. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A).

4. Before the Id. CIT(A), it was pleaded that the observation of the Assessing Officer that the majority of the notices either remained unclaimed or the said persons did not make any compliance, was not factually correct. That, in fact, the Assessing Officer had issued notices to 83 parties, out of which 21 notices returned unserved. That majority of the parties replied to the notices. It was also submitted that non-delivery of notices u/s 133(6) of the Act in some cases may be because the said parties might have changed their address or close their business. However, the assessee on its part had furnished account confirmation along with Income Tax Acknowledgement and other documents in respect of the parties, whom the notices could not be served. Even, the assessee had also deducted TDS, wherever applicable. Even, out of 21 parties, whom the notices could not be served, only 7 parties were related to sundry creditors and there were no majority transactions with them. The Id. CIT(A), considering the aforesaid submissions, observed that the rejection of books of account by the Assessing Officer on account of non-compliance/non-service of notices

issued u/s 133(6) of the Act to some of the sundry creditors and subsequent estimation of income of the assessee @ 2% of the contracted work/turnover, was not tenable. He, however, accepted the alternate contention of the assessee, as was submitted before the Assessing Officer during the assessment proceedings, to determine the net profit of the current year on the basis of the earlier three years' average, which, as per the data submitted by the assessee itself, was @ 0.77% of the total turnover.

5. Now, the main contention of the ld. counsel for the assessee is that the ld. CIT(A) having observed that 'rejection of the books by the Assessing Officer on account of non-compliance/unservice of notices issued u/s 133(6) of the Act to some of the sundry creditors and subsequent estimation of income of the appellant @ 2% of the contract work is not tenable', he was not justified in estimating the profits @ 0.77% of the total turnover as this action of the CIT(A) is in contravention to its earlier finding that the rejection of the books of account in this case was not justified.

5. The ld. DR, on the other hand, has brought our attention to relevant part of the assessment order, wherein, the following submissions of the assessee have been reproduced:

"In reply to question raised on hearing on 01/03/2016 regarding non submission of reply for notices issued under section 133 (6) and non-delivery of notices in some cases. we beg to submit that the said parties may have changed their address or closed their business at present and lots of them not replied reason unknown to us. Despite giving opportunity to those parties, reply of same is not submitted to you by them. If the figures of all default cases taken into consideration the disallowance will definitely not, reflect the true picture of the firm for the financial for the year ended 31st March 2013. Moreover we would like to bring attention of your goodself that we have submitted account confirmation and 1TR acknowledgment of all such cases from our side. However we under protest accept our books of accounts to be rejected. We would like to pray before goodself to please determine net profit on the basis of historical

trend as the scrutiny assessment of all these years has also completed in due course at your office, which are as follow:-

<i>PARTICULARS</i>	<i>FY 2011-2012</i>	<i>FY 2010-2011</i>	<i>FY 2009-2010</i>	<i>Average</i>
<i>Turnover</i>	<i>90,95,08,783.</i>	<i>2,03,98,05,261.</i>	<i>1,85,17,55,583.</i>	<i>1,60,03,56,542.</i>
<i>Net profit before tax</i>	<i>49,70,757.24</i>	<i>1,90,14,323.93</i>	<i>1,55,47,761.32</i>	<i>1,31,77,614.16</i>
<i>Net Profit</i>	<i>0.55</i>	<i>0.93</i>	<i>0.84</i>	<i>0.77</i>

5.1 He has further submitted that the Id. CIT(A) has taken note of the aforesaid submissions of the assessee and directed the estimation of the profit of the assessee as per the own submissions of the assessee made before the Assessing Officer.

6. We have considered the rival contentions and gone through the record. In this case, it is an admitted fact that the assessee had huge sundry creditors of Rs.21,32,57,979/-. As per the own version of the assessee, there were as many as 83 parties to whom the notices u/s 133(6) of the Act were sent by the Assessing Officer. Though, the Assessing Officer has noted that in majority of the cases, either the notices remained unserved or the concerned parties did not respond, however, the plea of the assessee before the CIT(A) was that out of 83 parties, only 21 notices returned unserved. However, there is no pleading as to the effect that in many cases, no responses were received from the parties. It was duly admitted by the assessee before the Assessing Officer that if the figures of all default cases are taken into consideration, the disallowance will definitely not reflect the true picture of the financials of the firm for the year under consideration. The assessee, duly taking into consideration the aforesaid circumstances, had proposed the Assessing Officer to determine the net profit on the basis of historical trend and itself had given the data to the

Assessing Officer, as reproduced above in a chart, that the average net profits of the assessee for the last three years was @ 0.77% of the turnover.

6.1 Now, in this case, the assessee wants to get benefit of the observation of the CIT(A) that the ld. CIT(A) having observed that merely because notices to some of the parties remained unserved and in some other cases, they did not respond, the rejection of the books of account for that reason was not justified. The contention of the ld. AR is that in view of the above finding of the ld. CIT(A), the returned income of the assessee was liable to be accepted. We are not convinced with the aforesaid contention raised by the ld. AR of the assessee. Even, though the ld. CIT(A) has held that the books of account should not have been rejected on account of non-service, non-response from some of the parties, however, despite these observations, the ld. CIT(A) has not held that the genuineness of the transactions/sundry creditors stands proved. On the other hand, the assessee considering that in case of substantial number of parties, either notices could not be served or no response was received, itself had offered to estimate the net profit of the assessee on the basis of historical trend and also itself given the data of last three years and proposed the Assessing Officer to estimate the income for the year under consideration @ 0.77%. Even on the one hand, the plea of the assessee is that it had its own part provided the confirmation of accounts from all the parties and on the other hand, the assessee, itself, has submitted before the Assessing Officer that 21 parties to whom the notices could not be served, might have shifted their address or closed their business. Now, the question that arises, is that if, such parties have shifted their address or closed their business, then how the assessee could obtain the confirmations from the said parties? Therefore, the confirmations submitted by the assessee cannot

be solely relied upon without any corroboration. Under the circumstances, the burden shifts upon the assessee to prove the genuineness of the transactions. The assessee, fully aware of the facts and circumstances of the case, had offered income @ 0.77% of the turnover. In view of this, we do not find any infirmity in the order of the CIT(A) as the ld. CIT(A) has accepted only the alternate contention of the assessee considering the facts and circumstances of the case and considering that the assessee could not establish the genuineness of the transaction in many cases. We, therefore, do not find any merit in the appeal of the assessee and the same is accordingly dismissed.

7. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 8th October, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 08.10.2024.

RS

Copy of the order forwarded to:

1. GNG Exports
2. ACIT, Circle-33, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches