

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.210/Ind/2024
(Assessment Year: 2014-15)

Shri Chandan Chouhan, Ward No.24, Nath Gali, Khargone (Appellant / Assessee)	Vs.	DCIT, NFAC Delhi (Respondent/ Revenue)
PAN: AUXPC9073A		
Assessee by	Shri Ashok Surjan, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.10.2024	
Date of Pronouncement	18.10.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 15.01.2024 of Commissioner of Income Tax-Appeals (National Faceless Appeals Centre), Delhi for A.Y.2014-15.

2. The assessee has raised following grounds of appeal:

"1.The Ld. CIT(A) erred in dismissing the appeal for non-prosecution without considering the submission made on 22.12.2023 and addendum on 25.12.2023 well before date of hearing fixed for 05.01.2024 vide hearing notice dated 21.12.2023 having DIN ITBA/NFAC/F/APL_1/2023-24/1058979237(1). Hence the decisions quoted by him on non- prosecution of appeals is not applicable to the present case. Thus the order is arbitrary, unwarranted, without jurisdiction and void-ab- initio.

2. The Ld. CIT(A) failed to take note of fact of completion of assessment on an income of Rs. 1,00,14,137/- which is 346 times of the returned income of Rs 2,88,900/- resulting in high pitched assessment.

3. The Ld. CIT(A) failed to exercise his coterminous powers available in the Act in respect of Sec. 250 while deciding appeal.

4 The Ld. CIT(A) erred in dismissing appeal because it confirms the addition made by AO on calculating business income by applying 8% profit on amount of Rs. 12,51,76,710/- which is not as per Law in this behalf.

5 The CIT(A) erred in not deciding appeal on merits and in dismissing and holding that appellant is not interested in prosecuting appeal. The Ld. CIT(A) failed to take note of decisions of honourable ITAT in case of Pradeep Soni reported as (2011) 17 ITJ 611 holding that best judgement assessment is not to penalise the assessee but to make a correct assessment of income. He also failed to take note of decision of the honourable ITAT in the case of Dr. Rakesh Agrawal reported as (2010) 14 ITJ 8 when ITO had neither referred to past history nor cited any comparable case for making addition.

6. The CIT(A) erred in dismissing the appeal because it affirms action of AO wherein no sufficient time (only three days times) was given to object draft assessment order which is against the principle of natural justice.

7.The Ld. CIT(A) erred in not annulling the assessment completed without issuing notice of 143(2) inspite of a valid return on record.

8. The Ld. CIT(A) erred in dismissing the appeal which confirms the action of AO wherein the AO erred in making addition without evaluating the material with him and without exercising his process u/s 131 & 133(6).

9. The Ld. CIT(A) erred in dismissing the appeal which confirms the action of AO wherein the AO erred in not making first addition of bank deposits

for which assessment was reopened u/s 147. This assessment is without having jurisdiction u/s 147 which had ceased with non-assessment of bank deposits.

10. The Ld. CIT(A) erred in dismissing the appeal which confirms the action of AO wherein the AO erred in not issuing Notice u/s 143(2) and in not allowing opportunity to assessee to exercise his option for furnishing material of his choice in support of return of income, though the AO duly exercised his own option u/s 142(1) and thus exceeded in his action permitted by law. The Ld. CIT(A) erred in dismissing the appeal which confirms the action of AO wherein the Ld. AO erred in taking action u/s 147 to verify and ascertain genuineness of bank deposits and not assess or reassess any escaped income much less an income of Rs. 1,00,14,137/- as per this own assertion in para 1 of assessment order. The Ld. CIT(A) erred in dismissing the appeal which confirms the action of AO wherein the Ld. AO erred in completing assessment exparte and passing order u/s 144 for non-compliance of unserved notices remaining unattended by verification unit even after compliance of final notice issued on 12.03.2022

11. The appellant craves leave to add, alter, withdraw any of the grounds of appeal before or during hearing."

3. The assessee is a whole sale dealer of sugar and not filed any return of income u/s 139 of the Act for the year under consideration. The A.O received the information regarding the deposit of cash to the tune of Rs. 12,51,76,710/- during the year under consideration. Accordingly a notice u/s 148 of the Act dated 30.03.2021 was issued. In response to the notice u/s 148 of the Act the assessee filed return of income on 08.03.2022 declaring total income of Rs.2,88,900/- however, the same was not taken into consideration by the A.O while framing the assessment u/s 147

r.w.s. 144/144B of the Act. The A.O estimated the income of the assessee by taking net profit @8% on the turnover of Rs.12,51,76,710/- and assessed the total income at Rs.1,00,14,137/-. The assessee challenged the action of the A.O before CIT(A) but the appeal of the assessee was dismissed as there was no response to the notice issued by CIT(A).

4. Before the Tribunal the Ld. AR of the assessee has submitted that the A.O made an arbitrary addition by estimating the income of the assessee @8% whereas the assessee has declared the net profit @0.23% on the whole sale business of sugar. He has referred to the return of income filed by the assessee vide acknowledgment placed at page 45 and 46 of the paper book and submitted that the return was filed well before the assessment order was passed. However, the A.O has ignored the same while making the addition. Ld. AR has further contended that the estimation of income by the A.O by adopting net profit @8% is highly arbitrary and without any basis. He has submitted that the profit margin in the business of whole sale trading of sugar is only 0.25% to 0.35%. The assessee has declared the net profit in the line of prevailing profit in the trade and therefore, the addition made by the A.O is not justified

and liable to be deleted. In support of his contention he has relied upon the decision of the Jaipur Bench of the Tribunal in case of *Padam Singhal Vs. ITO dated 23.12.2019 in ITA No.1099/JP/2019* and submitted that the Tribunal has considered the net profit @1% in case of sugar manufacturer and therefore, the profit in case of whole sale dealer is rightly declared by the assessee at 0.23%. He has submitted that in the said case Tribunal has taken comparable case of M/s Bajaj Hindustan wherein the net profit was declared for the assessment year 2010-11 and 2011-12 @1.91% and 0.39% respectively. Similarly in the case of Shree Renuka Sugars Ltd average net profit was found at 1.48%. The Ld. AR has thus contended that when the net profit of the manufacturer itself is around 1% then the net profit of the wholesaler cannot be more than 0.25% to 0.35%. He has also filed a copy of the assessment order dated 29.11.2019 in case of Smt. Beena Binwani Prop. of M/s Ashok International engaged in the same line of business of wholesaler of sugar wherein the A.O has accepted the net profit declared by the said assessee. Thus Ld. AR has submitted that the addition made by the A.O without any proper basis is not sustainable and liable to be deleted. However, he has pleaded that

the Tribunal may estimate the net profit as it deemed fit and proper.

5. On the other hand Ld. DR has relied upon the orders of authorities below and submitted that in the absence of any supporting evidence the AO has rightly adopted the net profit @8%.

6. We have considered rival submissions as well as materials on record. The A.O has estimated the income of the assessee by adopting net profit @8%. The department has not disputed the line of business of the assessee being wholesaler of sugar wherein the profit margin is very thin and even less than 0.50%. The A.O while making the estimation of net profit @8% has not given any comparable case or other basis being the prevailing net profit in the particular trading of wholesaler of sugar therefore, even in case of best judgment assessments the A.O is supposed to assess the correct and proper income of the assessee and shall not make an arbitrary addition. In case of *Shri Padam Singhal Vs ITO* (supra) the Tribunal has considered the comparable cases of profit margin of manufacturers of sugar and held in para 5 as under:

"5. We have considered the rival submissions as well as the relevant material on record. The AO has rejected the books of account of the assessee by invoking the provisions of section 145(3) of the Act. Though the AO has made a disallowance of 25% of the purchases on the ground of non-verifiable, however, the Id. CIT (A) has restricted the said addition by taking the Net Profit rate of 2% on the entire turnover. We find that the Id. CIT (A) has adopted a right approach of estimating the income of the assessee pursuant to the rejection of books of account under section 145(3). However, the estimation of income should be based on some proper and reasonable criteria. In the case in hand, there is no past history as this is the first year of assessee's trading, therefore, the reasonable rate of profit or GP ought to have been taken as declared by the similarly situated wholesaler/retailer of Sugar. The Id. CIT (A) instead of selecting comparable cases has selected the Sugar Manufacturing Companies being M/s. Bajaj Hindustan and Shree Renuka Sugars Ltd. Therefore, the adoption of proper and reasonable rate on the basis of the Sugar Manufacturing Companies declared Net Profit is not appropriate when the assessee is only a wholesaler/retailer in Sugar. Hence in the facts and circumstances of the case and in the interest of justice to bring this dispute to an end, we find it proper to estimate the income of the assessee by applying Net Profit of 1%. We further note that even the correct average Net Profit of M/s. Bajaj Hindustan and Shree Renuka Sugars Ltd. comes to 1.48% and not 2% as adopted by the Id. CIT (A). Accordingly, in the facts and circumstances, we find that this is the first year of business of assessee and accordingly a Net Profit @ 1% would be proper and reasonable criteria for estimating the income of the assessee. Hence the AO is directed to compute the income by adopting Net Profit rate of 1% of the total turnover."

6.1 Therefore, the Tribunal has estimated the net profit @1% of the total turnover by taking into consideration of net profit declared by the manufacturers of the sugar namely M/s Bajaj Hindustan and Shree Renuka Sugars Ltd. The A.O in case of Smt. Meena Binwani has accepted the declared income of the assessee in the assessment order as under:

Assessment No. - 80
Dim No - 20121065621-42 Smt. Meena Binwani, Indore
PAN:ABRPB5451E



I.T.N.S.65

INCOME TAX DEPARTMENT

1	Name of the assessee	Smt. Meena Binwani Prop. M/s Ashok International
2	Address	218, Vinay Nagar, Indore
3	PAN	ABRPB5451E
4	Ward	ITO-3(4), Indore
5	Status	Individual
6	Assessment Year	2012-13
7	Whether resident/Resident but no ordinarily resident/Non-resident	Resident
8	Method of Accounting	-
9	Previous Year	2011-12
10	Nature of business(es)	Business Income
11	Date(s) of hearing	As per order sheet
12	Date of order	29.11.2019
13	Section and sub-section under which the assessment is made	143(3) r.w.s. 147 of the I.T. Act, 1961

ASSESSMENT ORDER

The assessee had filed her original return of income for the year under consideration on 29.09.2012 declaring total income at Rs.47,80,920/- vide E-filing ack no.501297221290912. The case was re-opened u/s 147 of the Income Tax Act after taking prior approval of the Hon'ble Pr.CIT-I, Indore and notice u/s 148 was issued on 26.03.2019, which was duly served upon the assessee through speed post. In response to this notice the assessee e-filed her return of income for the year under consideration.



9

Smt. Meena Binwani, Indore
PAN:ABRPB5451E

The assessee is an individual and during the year under consideration running a proprietorship concern in the name of M/s Ashok International and derived income business.

3. Due to change in incumbent notice u/s 129 on 10.07.2019. Subsequently, notices 142(1) were issued from time to time. Notice u/s 143(2) of the I.T. Act, 1961 issued on 26.11.2019.

2. In response to the notices issued, AR of the assessee Shri Ashok Surjan attended and furnished written submissions. Which have been perused and placed on record. Case discussed with him.

4. Subject to the above remarks, the returned Income at Rs.47,80,920/- is accepted.

Assessed as above under section 143(3) r.w.s. 147 at returned Income of Rs.47,80,920/-. Tax and interest payable as per ITNS 150, which is part of this order. Demand notice issued.

Place: Indore
Dated:29.11.2019

Puja Jain
(K. Puja Jain)

Income Tax Officer-3(4), Indore

Copy to the assessee



Puja Jain
Income Tax Officer-3(4), Indore

6.2 In the said case the turnover of the assessee was Rs.17.93 crores and net profit declared by the said assessee was @0.37%. Considering the above facts of net profit prevailing in the wholesale trading of sugar is below 0.50% we are of the considered opinion that in the case of the assessee it would be appropriate and proper

to apply the net profit at 0.40% . Accordingly the A.O is directed to assess the income of the assessee by applying the net profit @0.40%.

7. The appeal of the assessee is partly allowed.

Order is pronounced in the open court on 18.10.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 18.10.2024

Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*