

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.381/Del/2019

[Assessment Year : 2014-15]

Mohd. Gulzar, T-444, Gali Pahar Wali, Ahata Kidara, Sadar Bazar, Delhi-110006. PAN-AGUPG8688A	vs	ITO, Ward-63(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Ms. Ananaya Kapoor, Adv.	
Respondent by	Shri Gireesh Kumar Kohli, Sr.DR	
Date of Hearing	27.08.2024	
Date of Pronouncement	21.10.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-42, New Delhi dated 23.10.2018 for the assessment year 2014-15.

2. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order passed by Learned CIT(A) is bad in Law.*
2. *That the Learned Commissioner of Income-tax (Appeal) is not justified in upholding the action of rejection of books of account by Assessing Officer.*
3. *That the Learned Commissioner of Income-tax (Appeal) erred in law and facts of the case by confirming the addition of ₹8,84,18,790 @ 2% of the gross turnover.*

4. *The Learned Commissioner of Income-tax (Appeals) failed to admit the additional grounds produced by the assessee.*
5. *The Learned Commissioner of Income-tax (Appeals) failed to admit that the assessee has wrongly shown turnover to be 448,88,82,307/- whereas his turnover is 73,77,191/- being the commission received.*
6. *The Learned Commissioner of Income-tax (Appeals) failed to admit that The assessee has shown a Net profit of 14,58,860/- on a turnover of 448,88,82,307/- whereas his profit is 14,58,860/- on turnover of ₹73,77,191/-.*
7. *The appellant craves, leave to add to, alter, vary, modify or otherwise amend the grounds of appeal before the appeal is finally disposed of.”*

3. **Ground Nos. 1 & 7** raised by the assessee are general in nature, need no separate adjudication hence, dismissed.

4. **Ground Nos. 2 to 6** raised by the assessee are inter-connected and relate to the impugned addition and rejection of books of accounts.

5. Facts giving rise to the present appeal are that the assessee is engaged in the business of purchases of live buffalos from shepherds of neighboring states and sells the same to the slaughter house. He filed his return of income for the year under appeal, declaring income of INR 13,58,860/- electronically on 05.11.2014. The case of the assessee was taken up for scrutiny and statutory notice u/s 143(2) of the Income Tax Act, 1961 (“the Act”) was issued to the assessee on 28.08.2015. In response to the statutory notice, Ld. Authorized Representative (“AR”) of the assessee attended the proceedings on behalf of the assessee and submitted the requisite details. The Assessing Officer (“AO”)

during the course of proceedings, called upon the assessee to explain about the purchase made in a sum of INR 4,48,15,05,116/-. He was asked to provide month-wise and party-wise sales and purchases made during the year under consideration. The AO has recorded that the requisite information was not supplied by the assessee therefore, he was of the view that the assessee failed to produce proper books of accounts. He proceeded to reject the accounts of the assessee and estimated profit @ 2% of total sales made by the assessee amounting to INR 4,48,88,82,307/-. The AO thereby, assessed the income of the assessee at INR 8,97,77,646/-.

6. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. He directed the AO to apply gross profit rate @ 2% on the total sales of INR 4,48,88,82,307/-.

7. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

8. Apropos to the grounds of appeal, Ld. Counsel for the assessee vehemently argued that the authorities below failed to appreciate the fact in right perspective and the AO erroneously rejected the books of accounts. She contended the AO estimated income on gross sales and failed to consider the past history of the assessee. She contended that the assessee is earning commission out of sale and purchase of live stock. Thus, total sales cannot be turnover of the business. The gross turnover should be related to commission receipts. Thus, the lower authorities have misdirected themselves. The

Revenue has accepted the commission income in past. Therefore, she prayed that lower authorities may be directed to compute profit on the basis of past history.

9. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. **Ground Nos. 1 & 7** raised by the assessee are general in nature, need no separate adjudication. **Ground Nos. 2 to 6** of assessee's appeal is with regard to rejection of books of accounts and estimation of profit by the AO. It is recorded by AO that the assessee failed to produce the supporting bills and vouchers. This fact is not rebutted by the assessee. It is well-settled that if the sale and purchase are not supported with relevant evidence, the AO would be justified in coming to conclusion that the accounts so produced, do not disclose true figure of account. But after having rejected banks of account, it is incumbent upon the AO for making best judgement assessment. It is not merely a formality, on the contrary, it is obligatory on the part of the AO to make best judgement in accordance with law and based upon analysis of similarly situated assessees. In the present case, the AO has not considered the past history and solely based his findings on estimation basis which in our considered view, is not correct approach. The Ld.CIT(A) also confirmed the additions, however he modified the finding by directing to apply gross profit. There is no dispute that the assessee's case is that it earns commission

therefore, value of sales cannot be his turnover. The gross commission as per assessee is stated to be INR 73,77,191/-. Even if the gross profit was requested to apply, it should have been on the gross turnover of commission. This aspect of treating the commission received as turnover of the assessee, is not considered and decided by the authorities below. The AO has noted the fact that the assessee has disclosed gross profit at INR 73,35,526/- being 0.16% of the total sales of INR 4,48,88,82,307/-. It is also noted by the AO that the assessee had made purchases in cash amounting to INR 4,20,37,92,616/-. After rejecting the books results, the AO proceeded to make addition of INR 8,97,77,646/- i.e. 2% of the total sales of INR 4,48,88,82,307/-. However, Ld.CIT(A) reduced this amount whereby he directed the AO to apply 2% of the gross profit. The assessee during the course of proceedings, submitted that under the identical facts, the Co-ordinate Bench of this Tribunal has set aside the issue back to the file of AO. The Tribunal in assessee's own case in **ITA No.1713/Del/2019** for **Assessment Year 2013-14** vide order dated **30.06.2022** has restored the issue by observing as under:-

12. *“Since, it is a primary question to determine the taxability of commission income or otherwise , it needs to be established what is the relation between the Allana Group and the assessee, it needs to be examined what is the margin allowed by the Allana Group to the assessee, the leverage the assessee has in payment made to the shepherds, the nature of relationship of the principle-agent between the assessee and the Allana Group, how the monies have been transferred from the Allana Group to the assessee such as withdrawals of cash of cash receipts and also the cash payments in relation to provisions of Section 44AB and 40A(3).*

13. *Hence , in the interest of justice to both the parties to deem it fit to remand the matter back to the file of the AO to examine and determine the real turnover o f the assessee. Needless to say that the AO shall afford an opportunity being heard to the assessee and the assessee shall abide by the requirements and the details called for by the revenue authorities.”*

11. For the same reasoning in Assessment Year 2012-13 in assessee’s own case in **ITA No.3103/Del/2015** for **Assessment Year 2012-13** vide order dated **27.07.2020**, the Tribunal has restored the issue to the file of Assessing Authority and for **Assessment Year 2011-12** in assessee’s own case in **ITA No.5139/Del/2015** vide order dated **28.11.2019** , the Tribunal has restored the issue to the file of AO by observing as under:-

11. *“The additional evidences contained documents establishing that the appellant is only an agent of Allana Group. In our considered opinion, these documents need thorough investigation/verification at the assessment stage. We, accordingly, restore the entire issue to the files of the AO. The assessee directed to furnish all these evidences before the AO and the AO is directed to examine the same and decide the issues afresh, after affording reasonable and fair opportunity of being heard to the assessee.”*

12. The facts and circumstances in the present case are similar and identical. The assessee has raised similar grounds in this appeal as well. We therefore, set aside the orders of the authorities below and restore the assessment to the file of AO for making *denovo* assessment after considering the submissions and evidences furnished by the assessee. The AO is directed to decide the issue afresh after affording reasonable opportunity of being heard

to the assessee. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21st October, 2024.

Sd/-

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI