

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.155/Nag./2024
(Assessment Year : 2017-18)

Shri Sachin Shankar Agnihotri
0, Bapuji Wadi, Ramnagar
Wardha 442 001 PAN – AEUPA4206N

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-2(1), Nagpur

..... Respondent

Assessee by : None
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 30/09/2024

Date of Order – 22/10/2024

ORDER

PER K.M. ROY, A.M.

The assessee has filed this appeal challenging the impugned order dated 30/09/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. The assessee has raised following grounds:-

"1. Whether on the facts and circumstances of the case, the learned Commissioner of Income Tax appeals was justified in enhancing the gross profit ratio from 8% as estimated by the Assessing Officer to 25% while passing the appellate order, without providing a rationale for doing so.

2. The appellant craves leave to add or alter any other grounds that may be taken at the time of hearing."

3. When the case was called for hearing, none appeared on behalf of the assessee appellant. We also do not find any application for adjournment.

Hence, the Bench was of the view that the appeal filed by the assessee can be disposed of ex-parte qua the assessee after hearing the learned Departmental Representative and on perusal of the material available on record.

4. A search and seizure action under section 132 of the Income Tax Act 1961 ("*the Act*") was conducted on 03/04/2019, in the residential premise of Shri Roshan Diwakar Dhore. During the search proceedings, various incriminating documents related to the assessee were found and seized. Based on seized documents, the case was selected for the scrutiny assessment under section 153C of the Act. Accordingly, a notice under section 153C of the Act was issued on 25/09/2020, and served on the assessee. The assessee had filed his return of income for the assessment year 2017-18 under section 139(1) of the Act on 20/03/2018, declaring total income at ₹ 13,21,270. In response to the notice issued under section 153C of the Act, the assessee further filed his return of income on 18/07/2021, declaring total income at ₹ 13,21,270. During the survey at the premises of office of Narayana Educational Society credit note regarding purchase of books amounting to ₹ 11,79,866, was detected. The assessee had not disclosed the income earned on the above purchases and therefore, the gross profit @ 8% was applied by the Assessing Officer as profit earned on the above purchases and accordingly an amount of ₹ 94,390, was added as business income for assessment year 2017-18. As it is a clear case of an undisclosed income unearthed during search a penalty proceeding under section 270A for mis-reporting of income was initiated. The assessee has made a turnover of ₹ 11,79,866, during the year and for this turnover the initial capital is required.

The above turnover was divided on monthly basis which comes to around ₹ 98,000, and the same was treated as initial capital for the undisclosed turnover made by the assessee. Therefore, the amount of ₹ 98,000, was added to the total income of the assessee. The Assessing Officer completed the assessment order under section 143(3) r/w section 153C of the Act on 04/08/2021, determining total assessed income at ₹ 15,13,660, after making addition of ₹ 94,390, towards profit on account of unrecorded sales and ₹ 98,000, on account of initial capital invested to generate the turnover. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the first appellate authority challenging both the additions.

5. The learned CIT(A) observed that during the search proceedings in case of Shri Roshan Dhore, it was found that the assessee has purchased books on credit and sold the same to the student of Narayan Education Society. The assessee during the appeal proceedings agreed to offer 4% of the total receipts as income from the business of books trading. The learned CIT(A) considering the facts of the case, was of the opinion that the gross profit @ 8% is on the lower side considering nature of business transactions. Hence, considering the facts & circumstances and the submissions of the assessee, the learned CIT(A) ultimately directed the Assessing Officer to assess gross profit @ 25% on undisclosed turnover and dismissed the appeal filed by the assessee. In effect, there was an enhancement of assessment by estimating higher amount of gross profit under section 251(1)(a) of the Act.

6. There was no representation from the side of the appellant. Since the facts lie in a narrow compass, with the able assistance of the learned

Departmental Representative on our own, the issues are being delved into. We find that the Assessing Officer estimated the gross profit @ 8% on unrecorded turnover and such profit rate was enhanced by the learned CIT(A) to 25% on his own without bringing on record any notice for enhancement as required under section 251(2) of the Act and thus such action is unsustainable and hence quashed to the extent of increase in the rate of gross profit. Accordingly, we uphold the order passed by the Assessing Officer whereby he has estimated profit @ 8%. Since no other ground except than that of enhancement is taken before us, it is not required to comment on the reasonableness of estimation or any other addition perpetrated by the Assessing Officer. Thus, all the grounds raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is allowed to the extent indicated above.

Order pronounced in the open Court on 22/10/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 22/10/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur