

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री संजय अवरथी, लेखा सदस्य  
के समक्ष

Before

PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1201/KOL/2024  
Assessment Year: 2018-19

*Pradeep Modi.....Appellant*  
*[PAN: AERPM 6185 R]*

*Vs.*

*ITO, Ward-40(1), Kolkata.....Respondent*

**Appearances:**

**Assessee represented by:** *Aayush Gupta, A.R.*

**Department represented by:** *Kallol Mistry, JCIT.*

Date of concluding the hearing : September 11<sup>th</sup>, 2024

Date of pronouncing the order : November 7<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-10, Mumbai [in short Id. 'CIT(A)'] dated 26.03.2024 arising out of the assessment order framed u/s 143(1) of the Act dated 31.05.2019.

1.1. The brief facts of the case of the appellant are that the assessee is engaged in export business of leather goods, filed its return of income for the

AY 2018-19 showing net taxable income of Rs. 5,25,250/-. The further case of the assessee is that the appellant assessee during the said year made export sales of Rs. 64,74,859/- and declared profit @ 6% on presumptive basis as per the deeming provisions of Section 44AD of the Act. The Assessing Officer (hereinafter referred to as ld. 'AO') while computing the total taxable income added the amount of Rs. 57,071/- to the presumptive business income @ 6% of Rs. 9,51,201/- being difference in turnover as the ld. AO found that there was a turnover of Rs. 74,26,060/- instead of Rs. 64,74,859/-. The ld. AO has further added an amount of Rs. 25,37,352/- i.e. Rs. 20,26,817/- on account of sale of license and Rs. 5,10,535/- against duty drawback receipts during the year and further added Rs. 6,36,509/- under the head 'income from other sources'. The said order has been challenged by the assessee before the ld. CIT(A) wherein appeal of the assessee has been partly allowed as ld. CIT(A) in deciding the turnover for the purpose of presumptive taxation has held that during appellate proceedings the appellant claimed that the said difference amount represents four sale bills which were raised and accounted for by the appellant during FY 2016-17 relevant to AY 2017-18 and ld. CIT(A) has directed the ld. AO to verify the claim of the assessee and delete the addition if the claim of the assessee is found to be correct but the Ld. CIT(A) has dismissed the appeal of the assessee on the aggregate amount of Rs. 25,37,352/- added by the ld. AO and further dismissed the addition of Rs. 6,36,509/-.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. Ld. Counsel for the assessee challenges the impugned order on the following grounds:

*"1. That the Hon'ble CIT(A) has erred in confirming the additions made by the Ld. Assessing Officer vide order U/s 143(3) dated 09.03.21.*

*2. That the Learned Assessing Officer has erred in law by making addition of aggregate amount of 25,37,352/- to the total income of the assessee on account of sale of license and duty drawback received during the year. The Hon'ble CIT(A) has erred in confirming the said addition despite income*

*having been offered to tax by the assessee U/s 44AD of Income Tax Act, 1961.*

*3. That the Learned Assessing Officer has erred in law by making addition of 6,36,509/- to the total income of the assessee on account of 'sundry balances written back' and 'miscellaneous receipts' under the head Income from other sources. The appellant had offered income @ 6% of the total turnover from eligible business on presumptive basis and hence, such further addition of 6,36,509/- under the head 'Income from Other Sources' is unjustified."*

1.3. The Id. Counsel for the assessee has submitted that total turnover of the assessee during the AY 2018-19 due to the export sales was at Rs. 64,74,859/- and not Rs. 74,26,060/- as taken and computed by the Id. AO. The Id. Counsel for the assessee submits that the Id. AO has also considered and included the four sale bills which were raised and accounted for by the assessee during the FY 2016-17 and not FY 2017-18. The Id. Counsel for the assessee submits that considering these facts, the Id. CIT(A) has allowed the appeal of the assessee on this ground and directed the Id. AO to consider the same and calculate again. The Id. Counsel for the assessee brought copies of four sale bills and sale account ledger as per books of accounts along with details of sales for the FY 2016-17. The Id. Counsel for the assessee further submits that addition of Rs. 25,37,352/- towards sales of license and duty drawback by the Id. AO confirmed by the Id. CIT(A) is completely erroneous as assessee has already offered tax on the total turnover of Rs. 64,74,859/-. The Id. Counsel for the assessee submits that receipts cannot be treated as ancillary receipts because assessee has already offered income @ 6% of the total turnover from eligible business in totality of his business income and not on item-wise basis. The Id. Counsel for the assessee in course of argument has submitted fresh computation of income and offered new offered to tax as per Section 44AD of the Act which according to him that income inadvertently not offered to tax earlier. He has filed a chart of fresh tax offered which is reproduced herein below:

| <b>Shri Pradeep Modi</b>   |            |                 |               |                  |                    |                 |
|--|------------|-----------------|---------------|------------------|--------------------|-----------------|
| <b>PAN : AERPM6185R</b>  |            |                 |               |                  |                    |                 |
| <b>Asst. Year: 2018-19</b>   |            |                 |               |                  |                    |                 |
| <b>Computation of Income</b>   |            |                 |               |                  |                    |                 |
| Particulars  | As per ITR |                 | As per Ld. AO |                  | Now offered to Tax |                 |
|  | Turnover   | Income          | Turnover      | Income           | Turnover           | Income          |
| <b>(A) Profits and Gains from "Business &amp; Profession"</b>          |            |                 |               |                  |                    |                 |
| <u>Profit on presumptive Basis u/s 44AD @ 6% of Turnover</u>           |            |                 |               |                  |                    |                 |
| a) Turnover  | 64,74,859  |                 | 64,74,859     |                  | 64,74,859          |                 |
| b) Addition to presumptive turnover by AO, but relief given by CIT(A)  | -          |                 | 9,51,183      |                  | -                  |                 |
| c) Income Inadvertently not offered to tax earlier, now offered to tax | -          |                 | -             |                  | 31,73,861          |                 |
| Total Turnover considered For Income @6%                               | 64,74,859  |                 | 74,26,042     |                  | 96,48,720          |                 |
| Total Income offered to tax @6%  |            | 3,88,492        | -             | 4,45,563         |                    | 5,78,923        |
| Business receipts from sale of license                                 |            | -               |               | 20,26,817        |                    | -               |
| Business receipts - Duty drawback                                      |            | -               |               | 5,10,535         |                    | -               |
| Profits and Gains from "Business & Profession"                         |            | <b>3,88,492</b> |               | <b>29,82,915</b> |                    | <b>5,78,923</b> |
| <b>(B) Income from "Other Sources"</b>                                 |            |                 |               |                  |                    |                 |
| <u>Interest</u>  |            |                 |               |                  |                    |                 |
| on Bank's F.D.   |            | 1,61,758        |               | 1,61,758         |                    | 1,61,758        |
| on Bank's Saving A/c   |            | 591             |               | 591              |                    | 591             |
| <u>Other Income</u>  |            |                 |               |                  |                    |                 |
| Sundry Balances Written Back   |            | -               |               | 6,25,797         |                    | -               |
| Misc. Receipts   |            | -               |               | 10,712           |                    | -               |
| <b>Gross Total Income</b>  |            | <b>5,50,841</b> |               | <b>37,81,773</b> |                    | <b>7,41,272</b> |
| <b>Less: Deduction under Chapter VIA:</b>                              |            |                 |               |                  |                    |                 |
| <u>Deduction u/s 80C:</u>  |            |                 |               |                  |                    |                 |
| PPF Deposit  |            | -25,000         |               | -25,000          |                    | -25,000         |
| <u>Deduction u/s 80TTA:</u>  |            |                 |               |                  |                    |                 |
| Interest on bank's saving A/c  |            | -591            |               | -591             |                    | -591            |
| <b>Net Taxable Income</b>  |            | <b>5,25,250</b> |               | <b>37,56,182</b> |                    | <b>7,15,681</b> |

1.4. Contrary to that Id. D/R supports the impugned order.

2. We have perused the record and find that the assessee is engaged in export business of leather goods and during the year under consideration his total turnover from export sales was Rs. 64,74,859/-. It admits of no doubt that Id. CIT(A) after considering the sale bills and ledger account considered the case of the assessee regarding his turnover being genuine. So, this point is not in dispute that total turnover of the assessee during the year under consideration was Rs. 64,74,859/- and not Rs. 74,26,060/-.

2.1. Now, coming to the next point i.e. addition of Rs. 25,37,352/- as made by the Id. AO confirmed by the Id. CIT(A). It is important to mention here that the assessee has already offered income @ 6% of the total turnover from eligible business and in totality of his business and not on item-wise business. Going over the provisions of Section 44AD of the Act we find that there are two key words used for calculation of turnover; first, turnover and second,

gross receipts. But the word 'gross receipts' has not been defined in the Income Tax Act. Section 28 of the Act defines the receipt from business and profession wherein it has been categorised that the income shall be chargeable to the income tax under the head 'profits and gains of business or profession'. The relevant extract is as under:

*"28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—*

*(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;*

*(ii) any compensation or other payment due to or received by,—*

*(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;*

*(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;*

*(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto;*

*(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business;*

*(e) any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business;*

*(iii) income derived by a trade, professional or similar association from specific services performed for its members;*

*(iiia) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947);*

*(iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;*

*(iiic) any duty of customs or excise re-paid or re-pay-able as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971;*

*(iiid) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);*

*(iiie) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);”*

As per plain reading of sub clause (iiia) and (iiic) of section 28, it has been clarified that any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971, shall be chargeable to income-tax under the head "Profits and Gains of business or profession".

2.2. Ld. Counsel for the assessee has also drawn our attention to the Guidance Note of Tax Audit u/s 44AB of the Act issued by Institute of Chartered Accountant of India wherein it has been clarified that duty drawback is part of gross receipts for the purpose of calculation of turnover/gross receipts under the head "Business and Profession". Ld. Counsel for the assessee has also drawn our attention to the judgment of the Coordinate Bench of ITAT Delhi in the case of *Sanjay Bahl vs. ITO* in ITA No. 5709-5710/Del/2018 order dated 24.04.2019. Going over the said decision, relevant portions are reproduced herein below:

*“I have heard both the parties and perused the records, especially the impugned order. I find that the assessee has declared his business income u/s 44AD of the Act and the gross receipts/turnover has been shown as Rs. 21,38,294/- and profit has been declared as @ 8% of turnover which amounts to Rs. 1,71,064/- and as per Export Summary Data provided by CBEC, Rs. 1,22,983/- has been sanctioned to the assessee as Duty Drawback during the FY2014-15.*

*The AO observed that the amounts sanctioned as duty drawback has not been taken into account while computing income of the assessee for the relevant year.*

*I further find that the provisions of Section 44AD clearly stipulates that a sum equal to 8% of total turnover or gross receipts of the assessee in the previous year on account of such business shall be deemed to be the profits and gains of the such business chargeable to tax under the head 'profits and gains of business or professions'. I further note that in this case the duty drawback of Rs. 1,22,983/- is undoubtedly part of gross receipts of the assessee, therefore, it is to be included while working out profit 8% of the gross receipts. Further, section 28(iii)(c) of the Act clearly brings the receipt of duty draw back in the nature of business receipts."*

2.3. The assessee has further relied on the decision of ITAT Jaipur in the case of *Smt. Urmila Tank vs ITO Ward-5(2)*, Jaipur pronounced on 26.09.23 and the relevant portion is reproduced herein below:

*"After scrutinizing and analyzing the entire facts as well as legal proposition, we find that since the assessee had shown her income from business and profession under section 44AD by declaring total gross receipt of Rs. 49,76,925/- which also included duty drawback of Rs. 3,02,365/- and as per the provisions of section 44AD of the IT Act there are two ketch words used for calculation of turnover, first is "turnover" and second is "gross receipts", and since the "gross receipts" word is not defined in IT Act, 1961, therefore, for the purpose of calculation of "gross receipts" under section 44AD, all the receipts from business and profession as defined in section 28 of the IT Act, 1961 is to be taken as part of "gross receipts".*

*Therefore, considering the totality of the facts and circumstances of the case as discussed above and also considering the decision of coordinate bench of the ITAT Delhi in case of *Sanjay Bahl vs. ITO (supra)*, I am of the view that the duty drawback is part of gross receipts. Therefore, I treat the same as part of gross receipts. The AO is directed to treat the duty drawback as part of gross receipts and addition so made is directed to be deleted."*

3. Going over the facts of the case as well as the provisions of Section 44AD of the Act, we are in this view that Section 44AD of the Act is at all applicable to the case of the assessee for the relevant AY 2018-19. So far, the decisions relied upon by the ld. CIT(A) are concerned, the said decision dealt in Section 80IB of the Act. However, the present case is with regard to Section 44AD of the Act. There is a clear distinction in the facts of the decision of the Hon'ble Apex Court and the present case. As we have already discussed in our preceding paragraph that the assessee has offered tax which according to him inadvertently not offered earlier. He has already given a chart that he is

ready to pay as per the provisions made u/s 44AD of the Act and offer to tax of total turnover considered for income @ 6%.

3.1. Considering the above facts, we are in this view to accept the contention of the assessee and accordingly, the appeal of the assessee is allowed by setting aside the order of the Id. CIT(A) and the Id. AO. The Id. AO is directed to accept the new offered to tax as mentioned by the assessee in chart (*supra*) and give effect to.

4. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 7<sup>th</sup> November, 2024.**

*Sd/-*

**[Sanjay Awasthi]**

Accountant Member

Dated: 07.11.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Pradeep Modi, 18B, Mayfair Road, Kolkata, West Bengal, 700019.**
- 2. ITO, Ward-40(1), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.
- Guard File

*//True copy //*

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata