

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD'SMC' BENCH, ALLAHABAD**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.84/ALLD/2023  
A.Y. 2013-14

|   |     |                              |
|---|-----|------------------------------|
| Ataul Mustafa,<br>Nanbai, Shahzadpur, Kaushambi | vs. | DCIT,<br>Circle-2, Allahabad |
| <b>PAN:BVCPM0589G</b>                           |     |                              |
| (Appellant)                                     |     | (Respondent)                 |

|                        |                        |
|------------------------|------------------------|
| Assessee by:           | Sh. Sanjay Kumar, Adv  |
| Revenue by:            | Sh. Shiv Kumar, Sr. DR |
| Date of hearing:       | 22.10.2024             |
| Date of pronouncement: | 27.12.2024             |

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed against the order of the Id. CIT(A), Allahabad dated 7.03.2019 under section 250 of the Income Tax Act, 1961. The grounds of appeal preferred by the assessee are as under:-

*"1. Because the Ld. Commissioner of Income Tax (Appeal) has ignored the submissions made before him, ignored the Comparative Cases and confirmed the addition of Rs. 25,96,375/- which was made in an Ex parte order by applying a higher rate (2%) of Net Profit.*

*2- Because the Commissioner of Appeals erred in confirming the addition made by using the 2% Net Profit Rate made upon by the Ld Assessing Officer relying upon the case of Babu Islaam, the Ld Commissioner of Income Tax Appeals disregarded the established determination of 0.41% Net Profit made by the Hon' able Settlement Commission in the very case of Babu Islam. The appellant argues that the Rs 25,96,375/- of addition should be deleted.*

*3- Because the order is bad in the eyes of Law and against the facts."*

2. On being queried for the delay in the filing of the appeal, it was submitted that the appeal order had been communicated to the assessee on 18.05.2023 and therefore, the appeal had been filed by the assessee within time. The ld. Sr. DR did not dispute this claim of the assessee and therefore, proceedings on the submission of the assessee regarding the date of submission, the appeal is admitted for hearing. The facts of the case are that the assessee is in the business of selling Livestock (Buffaloes) to his customers on wholesale basis. He has shown sales of Rs.17,10,18,753/-, on which net profit has been shown at Rs.8,23,712/- which the ld. AO observed, worked out to only .48%. The assessee was, therefore, asked to explain the reasons for such a low net profit. In response, it was submitted that the assessee was only a Collector/Gatherer of livestock. Since he was registered in Indargo Food Private Limited and no person other than registered suppliers could supply to these export houses, the owners / sellers came to the assessee and supplied the livestock. At times, the assessee or his agents visited villages and cities to arrange livestock and then the livestock was delivered to the export houses, by the assessee. The assessee was given payments by RTGS/NEFT, which he always withdrew and distributed to the owners of livestock. He received payment of Rs.50 paise to Rs.1, per Kg of meat procured by the export house. In percentage terms, it was submitted that the net profit varies from .25% to .5%, as the business was a high turnover business with minimum profits. It was further submitted, that the gross profit and the resultant net profit was genuine and verifiable from the available books of accounts. Accordingly, it deserved to be accepted. The ld. AO refused to accept the submission, in view of the fact that the books of accounts were not produced, either before him or to the previous ld. AO, before transfer of the case to him. Thus, the sales as well as the various expenses debited to the profit and loss account, remained unverifiable. Therefore, he held that the net profit declared, as per the audited statements of accounts, could not be accepted. He, therefore,

recorded the fact that he was not satisfied about the completeness or correctness of books of accounts, which had never been produced before him and stated that the audit report were merely a report, which did not preclude the Id. AO for calling from the supporting materials from the assessee and making disallowances, if they were not supported by vouchers or other evidences to the satisfaction of the assessee. For this proposition, he relied upon the case of **Goodyear India Limited vs. CIT** (2000) 246 ITR 116 (Del). Therefore, he applied the provisions of section 145(3) and rejected the books of the assessee. In estimating the income, he relied upon the case of Sri Babu Islam, another assessee belonging to the same family of the assessee and in the same trade, where assessment was made by applying a net profit rate of 2%, which had been accepted by the assessee by not going in appeal. Therefore, he adopted the same to be a fair and reasonable net profit and accordingly, he worked out the net profit to be Rs.34,20,375/-, making an addition of Rs.25,96,663/- in the process.

3. Aggrieved by this addition, the assessee went in appeal before the Id. CIT(A). Before the Id. CIT(A), it was submitted that the net profit rate was wrongly and arbitrarily applied and ignoring the comparative cases of Shri. Ishtyaq Ahmad, where net of .11% was disclosed in assessment year 2008-09 and .57% was applied in assessment year 2009-10. The Id. AO had ignored the above two cases and relied upon another case of Babu Islam, only with a view of enhancing the income. It was submitted that vouchers etc., could not be produced, as they were misplaced but a copy of the auditor's report and financial statements were enclosed. It was further submitted, that while relying upon the case of Shri. Babu Islam, the Id. AO had failed to note that the said assessee had filed an application before the Income Tax Settlement Commission and in that case, the Settlement Commission had been pleased to apply the rate of .41% as the net profit rate. The Id. CIT(A) observed the admission of the assessee, that books of accounts (though audited) and vouchers

could not be placed, as they were misplaced. In view of the same, he held the action of the Id. AO to be legally correct. He further held that what happened in the case of Shri. Babu Islam before the Income Tax Settlement Commission was not relevant for consideration, as the facts considered by the ITSC to reach their conclusion, was not available on record to see, if the same decision could be applied here. In fact, he held that the very fact that the matter went to the ITSC showed that there were irregularities in that account. Therefore, he declined to give the assessee any benefit on account of the order of the ITSC in case of Shri. Babu Islam and he confirmed the addition made by the Id. AO. The assessee is accordingly, in appeal before us.

4. Shri. Sanjay Kumar, Advocate (hereinafter referred to as the 'Id. AR') appearing before us, argued that the net profit rate of 2% in the case of the assessee was made on account of the *ex parte* order in the case of Shri. Babu Islam for the assessment year 2011-12, where no appeal was made. However, in the case of the same person later, for the assessment year 2011-12, the Hon'ble Settlement Commission had agreed upon a net profit rate of .41% and the Department did not accept the same and did not challenge it before the Hon'ble High Court. A copy of the order of the Hon'ble Settlement Commission was filed before us. It was further submitted, that in the case of another assessee with a similar business, namely Shri. Ishtyaq Ahmad, the Income Tax Settlement Commission also applied a rate of .41% and the Department accepted it and did not challenge the order before the Hon'ble High Court. It was further submitted that the Hon'ble ITAT, Delhi Bench had accepted a rate of .12% in the case of another similarly placed assessee, Zakira Kamil vs. ITO, Ward-53(3), New Delhi in ITA No.3022/Del/2016 for the A.Y. 2012-13. All these orders were filed before us. It was accordingly prayed, that the net profit rate adopted by the Id. AO was much too high and, in view of the prevailing net profit rate as evidenced from other cases, the income of the assessee should be estimated in accordance with the regular trade practices.

5. On the other hand, Shri. Shiv Kumar, Sr. DR (hereinafter referred to as the 'Id. Sr. DR') appearing on behalf of the Revenue, submitted that in the absence of the books of accounts and the documentary evidences on the basis of those books of accounts, the audit report placed by the assessee could not be relied upon and the profit stated therein could not be correctly determined. Therefore, the Id. AO was fully justified in adopting N.P. rate of 2% and the fact that the Settlement Commission had subsequently estimated the profit of some assessee's at another rate or that the ITAT had granted relief to another assessee, were determined by the facts of that particular case and should not have a bearing upon the assessee's case.

6. We have duly considered the facts and circumstances of the case and perused the orders submitted before us. At the first instance, we observe that the case of Zakira Kamil is not comparable to that of the assessee, because the Hon'ble ITAT observed in that particular case, that various compliances had been made before the Id. AO, which is not the fact in this case. However, the cases in M/s Babu Islam and Ishtyaq Ahmad bare a close resemblance to that of the assessee. There too, the assessee's were not maintaining proper books of accounts backed up by vouchers and in those cases, had filed returns where they were declaring net profit, in which there was a wide range. The Hon'ble Settlement Commission, therefore, adopted an average of this range for the purposes of passing the settlement order. It ordered that in cases where the assessee had declared below .41%, the minimum would be taken .41% but in cases where more than .41% had been offered, the higher amount could be taken to be the income of the assessee for that particular year. On going through the matter, we find that the assessee is pursuing a similar trade and his accounting is beset with the same lacunas as that of Babu Islam and Ishtyaq Ahmad. Therefore, in view of the order of the Hon'ble Settlement Commission in those cases, and after considering the fact that the assessee has not produced any evidences in support of his audited statements, we deem it fit to

estimate the income of the assessee at .7% to cover for any leakages in the said accounts which could not be investigated in detail, on account of failure to produce the books, documents or vouchers before the ld. AO. We arrive at this estimate on the basis of the assessee's own statement before the Assessing Officer, wherein he had stated that his profit varied between .5 and 1%. Accordingly, the net profit is worked out at Rs.11,91,131/- on total receipts of Rs.17,10,18,753/- and the assessee is granted relief for the balance.

7. In the result, the appeal of the assessee is partly allowed.

Orders pronounced on 27.12.2024 at Lucknow U.P.

*Sd/-*

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

*Sd/-*

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

DATED: 27/12/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.