



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.38/CTK/2025
Assessment Year : 2018-19

Rourkela Wholesale Consumer Cooperative Stores Limited., Nanda Bhawan, Main Road, Bisra Road,, Rourkela	Vs.	Income Tax Officer, Ward-1, Rourkela
PAN/GIR No.AAAAR 0626A		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Sarangi, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 29/01/2025
Date of Pronouncement : 29/01/2025

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id
CIT(A), NFAC, Delhi dated 18.11.2024 in Appeal No.NFAC/2017-
18/10239529 for the assessment year 2018-19.

2. Shri S.K.Sarangi, Id AR appeared for the assessee and Shri
S.C.Mohanty, Sr. DR appeared for the revenue.

3. The assessee has taken following grounds of appeal:

"1. For that order u/s.250 of the I.T.Act dated 18.11.2024 as passed by the Id CIT(A), NFAC is illegal and arbitrary on the facts in the circumstances of the case.

2. For that the Id CIT(A) is not justified to confirm the rejection of books of account and estimation of net profit @ 1% of the turnover as made by the AO on the facts and in the circumstances of the case."

4. Brief facts of the case are that the assessee is a Co-operative Society engaged in the business of running of petrol pump. The Assessing Officer having information that the assessee has made huge cash deposit of Rs.36,94,07,000/- in bank account with State Bank of India and also no return of income was filed, therefore, proceedings u/s.148 of the Act were initiated and after passing the order u/s.148A(d) of the Act, notice u/s.148 of the Act was issued. During the course of assessment proceedings, the assessee has filed the unaudited financial statements. The reasons for non-filing of the return u/s.139(1) of the Act and also the return in response to notice u/s.148, it was submitted by the assessee society that the auditor was not appointed by the Co-operative Department, therefore, the books of account could not be audited and since it is beyond the control of the assessee, therefore, for such delay, coercive measures should not be taken against the assessee. The assessment was finally completed by the Assessing Officer whereby the income of the assessee is assessed at

Rs.44,99,890/- by applying the profit rate at 1% on the declared turnover after invoking the provisions of section 145(3) of the Act.

5. In first appeal, the Id CIT(A) confirmed the action of the Assessing Officer. Thus, the present appeal is before us.

6. During the course of hearing, Id AR submits that the assessee is a consumer cooperative society and is running a petrol pump, where the purchases are made from IOCL. The books of account of the assessee were maintained on regular basis, however, due to the fact that the Auditor General of Cooperative Societies Odisha, Bhubaneswar has not appointed the auditors and ultimately vide letter dated and 29.11.2021 had appointed the auditor M/s. Pradhan and Associates Chattered Accountant, Rourkela to carry out the audit work of the accounts of the society for the financial year 2016-17,2018-19,2020-21 and M/s GRC and Associates, CA for the financial year 2017-18 and 2019-20, therefore the assessee had not been able to file the audit report and return of income within the statutory time limit prescribed u/s. 139(1) of the Act. The copy of the relevant orders issued by Directorates of Cooperative audit, Odisha Bhubaneswar are placed in the paper book. Learned AR submits that the necessary books of accounts were maintained on day today basis. After the appointment of the auditors, the accounts were audited and the same were filed before the Assessing officer. The auditors have not pointed out any specific defects in the books of account, However, the AO observed that the assessee has not

filed any return of income either u/s 139(1) of the Act or u/s 148 of the Act and also not filed any return of income for the previous years and further observed that the audit report filed in Form 3CD where the most of the columns are filled as in Form 3CD where the most of the columns are filed as 'NIL' or 'Not applicable', has invoked the provision of section 145(3) of the Act and applied the profit rate @ 1% as against 0.09% declared by the assessee resulting in the assessed income at Rs.44,99,890/-. He further submits that the assessee is running a petrol pump where day today stock inventory is maintained and submitted to DSO on regular basis. Also, the IOCL also made periodical inspection. Merely on the fault of the auditors that the certain columns were not properly filled in the report, the Assessing officer was of the view that the books of account were incomplete though no specific defects whatsoever was pointed out and details submitted by the assessee during the course of assessment proceedings. Therefore, he submitted that the explanation of the assessee non regarding the non-filing of the return deserves to be accepted. With regard to the application of profit rate @1%, Ld AR submits that in the line of business of running a petrol pump, the adoption of rate profit @ 1% is very 5 to high. Looking to the fact that the small amount of commission is given to the dealers having petrol pumps, such high rate of profit should not be applied. He further submits that in the immediately subsequent assessment year i.e 2019-2020, the assessee has declared net profit @ 0.52% on the turnover of

54,79,15,923/- which was accepted by the department in the assessment completed u/s 147/144B of the Act on 03.01.2024. Copy of the order is placed in paper book. Accordingly, Id AR in an alternate prayed that profit rate be reduced to a reasonable extent in case the provisions of section 145(3) are confirmed and income is estimated.

7. On the other hand, Id Sr. DR supported the orders of the lower authorities and submitted that the assessee is a non filer and return of income was not filed in response to notice u/s 148 of the Act. However, at the fag end of the proceedings, the financial statements were filed which clearly shows that the assessee has not maintained regular books of account. Therefore he prayed that the lower authorities have rightly made the addition which deserves to be upheld.

8. We have considered the rival submission and perused the material available on records. It is seen that the assessee is co-operative society whose accounts are to be audited by the auditors of the Director of the Co-operative Audit, Odisha, Bhubaneswar. From the perusal the letters of appointment of auditors of Joint General of Co-operative Society, we find that on 29.11.2021 the auditors were appointed to get the accounts audited for 5 financial years starting from 2016-2017 to 2019-2020. As the accounts of the assessee were not audited, it was not possible for the assessee to file the audit report and the return of income for those assessment years. The reason of which is bona fide and since the circumstances are beyond the

control of the assessee, therefore the delay was occurred in filing the return in time. Looking to these facts, we find that the assessee had not produced the complete details before the AO and the auditors had also not properly reported the facts in the audit report in form 3CD, therefore the true & correct picture of the financial accounts could not be deduced. In view of these facts, we confirm the invocation of provision of section 145(3) of the Act. With regard to application profit rate, from the facts of the case, more particularly looking to the facts that the assessee is running petrol pump and entire purchases were from ICOL where there is no room of making any un accounted purchases, therefore the purchases and sale cannot be doubted. Further looking to the fact that the dealing in petroleum products get very meager percentage of commission from the products sold by them, the profit rate @1% seems to be very high. Considering the facts in the case of the assessee and the profit rate of 0.52% accepted by the department in an assessment u/s 147 read with section 144B of the Act, therefore in the year under appeal in our considered opinion, the net profit @ 0.50% on the declared turnover of RS.44,99,890/- would be reasonable to meet the ends off the justice. Accordingly, the Assessing Officer directed to apply the rate of profit @0.05% on the turn over declared by the assessee.

9. In the result, appeal of the assessee stands partly allowed.

Order dictated and pronounced in the open court on 29/01/2025.

Sd/-
(George Mathan)
JUDICIAL MEMBER

sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Cuttack; Dated 29/01/2025
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Rourkela Wholesale Consumer Cooperative Sstores Limited., Nanda Bhawan, Main Road, Bisra Road,, Rourkela
2. The respondent: Income Tax Officer, Ward-1, Rourkela
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Sambalpur
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK