



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.1717 and 1715/PUN/2024
Assessment Years : 2012-13 and 2013-14

Haroon Shaikh, Galli Nom 3, Islampura, Deopur, Near Talathi Office, Dhule – 424 001 Maharashtra PAN : AOBPS1058K	V/s	ITO, Ward-1, Dhule
Appellant		Respondent

Assessee by	:	Shri Sanket Joshi
Revenue by	:	Shri Sanjay K. Dhivare
Date of hearing	:	05.02.2025
Date of pronouncement	:	12.02.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals pertaining to Assessment Years 2012-13 and 2013-14 at the instance of assessee are directed against the separate orders dated 24.06.2024 passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') which in turn are arising out of respective Assessment Orders passed u/s.143(3) r.w.s147 of the Act.

2. Since the issues raised by the assessee are common for the two assessment years under appeal, I proceed to dispose of these appeals by way of this consolidated order for the sake of convenience.



3. I take up the appeal for the A.Y. 2012-13 as the lead case. Assessee has raised the following grounds of appeal :

“1. The assessment order u/s 143(3) r.w.s. 147 dated 16.12.2019 does not bear DIN No. in the body of the order and therefore, the said asst. order issued in direct contradiction to the CBDT Mandate notified vide Circular No. 19/2019 dated 14.08.2019 and Circular No. 27/2019 dated 26.09.2019, may be declared as null and void in law.

2. The learned CIT(A) erred in confirming the addition of Rs.19,36,753 by estimating Net Profit @8% on total sales of livestock without appreciating that the A.O. had neither rejected the books of accounts furnished by the appellant nor pointed out any specific defects in the books of accounts and hence, the addition made by estimating the net profit was not justified in law.

3. Without prejudice to the above grounds, the learned CIT(A) failed to appreciate that the A.O. was not justified in concluding that the appellant was engaged in wholesale trading business of livestock by ignoring the various evidences furnished by the appellant to prove that he was only engaged in the activity of transportation of livestock from Venkateshwara Hatcheries to small retail vendors on commission basis and therefore, the addition of Rs.19,36,753 made by estimating the NP @ 8% was not justified on facts and in law.

4. Without prejudice to the above grounds, the learned CIT(A) erred in not appreciating that even if it is assumed that the assessee was engaged in wholesale trading of livestock, still the estimation of NP rate @ 8% done by the A.O. on an adhoc basis without giving any basis for such estimation was on a very high side considering the low margins involves in the said nature of business and therefore, the addition of Rs.19,36,753/- was not justified.

5. The appellant craves leave to add/alter/amend any of the grounds of appeal.”

4. Ld. Counsel for the assessee has not pressed the Legal issue raised by the assessee vide Ground of appeal No.1 for both the assessment years. The said legal grounds for both the assessment years are therefore dismissed as ‘Not Pressed



5. Facts of the case in brief are that the assessee is an individual carrying on the business of transport of Live birds/Poultry products. Based on the information that the assessee purchased poultry products from Venky's group amounting to Rs.2,64,76,630/-, case of the assessee was reopened by issuance of notice u/s.148 of the Act dated 26.03.2019. In compliance, assessee furnished return of income declaring income of Rs.3,50,830/-. Valid notices u/s.143(2)/142(1) of the Act were served upon the assessee. During the course of assessment proceedings, ld. AO based on the information from Venky's group noticed that the assessee has purchased poultry products in cash amounting to Rs.2,64,76,630/-. When the assessee was asked to explain about the said transaction, it was stated that the assessee owns two poultry bird caged vehicles which are used to transport Live birds as per the request of buyers/retailers of Dhule District on per kg commission basis which are purchased on their behalf from Venkateshwara Hatcheries Pvt. Ltd., Malegaon (in short 'VHPL/'). The claim of the assessee is that based on the orders of various buyers, he collects the live birds/poultry products from VHPL outlets and brings them to the ultimate buyers/retailers. For this activity, he gets commission per kg basis and the net profit from this activity has been regularly offered to tax in the past and future and are ranging from 1.20% to 1.65%. Ld. AO thereafter called for the information from VHPL u/s.133(6) of the Act. In the reply, they only referred to the name of the assessee and his PAN which was registered as Standard Boiler, Dhule and the payments were received from the assessee. Thereafter,



ld. AO examined the financial statements furnished by the assessee and without rejecting the book results estimated the profit at 8% as against 1.22% declared by the assessee and made addition of Rs.19,36,753/-.

6. Aggrieved assessee preferred appeal before the ld.CIT(A) but failed to succeed. Now the assessee is in appeal before the Tribunal.

7. Ld. Counsel for the assessee commonly argued for both the years, firstly referred to the paper book containing 116 pages providing the details of submissions filed before the lower authorities and also documents to establish that assessee is not working in the capacity of the Retailer of Live birds/Poultry products but has only worked as Transporter of the Livestock from VHPL outlet to the buyers in Dhule District for whom he has purchased the livestock/poultry products. Ld. Counsel for the assessee also referred to the balance sheet, computation and financial statements for both the years to show that the regular books of accounts have been maintained and only the commission income is earned. He also referred to the paper book pages 78 and 79 to state that the assessee owns the vehicles for transporting the Live birds and also page no. 80 to show that in subsequent years assessee has been declaring the turnover of the purchases made from VHPL on behalf of various buyers and the average net profit earned is 1.45% and the return of income has been accepted by the Revenue authorities. He finally stated that by no stretch of imagination, assessee can be subjected to tax by estimating @8% Net Profit on the gross sales and only the net profit



percentage in the range of 1.25% to 1.65% may be computed without prejudice to its ground that the action of the AO is unjustified as the estimation of income has been made without rejecting the book results.

8. On the other hand, ld. Departmental Representative supported the orders of the lower authorities.

9. I have heard the rival contentions and perused the record placed before me. The only issue that arises for my consideration is regarding the estimation of net profit on the alleged purchases made in cash by the assessee from Venkateshwara Hatcheries Pvt. Ltd. Undisputedly, the assessee has been going to VHPL outlet for getting the Livestock and Poultry products and making payment in cash. The assessee is registered as Standard Boiler in the books of VHPL. Before us, Ld. Counsel for the assessee contended that the assessee is not bringing the Livestock from VHPL for the purpose of selling at its retail outlet in Dhule District but actually for various retailers of Dhule District who approach the assessee and ask him to bring the Livestock from VHPL since the assessee owns two bird caged vehicles for bringing Livestock collectively for various retailers. On the request of the retailers of Dhule District and after taking the orders from them, the assessee is claimed to have been approaching VHPL and the payments which he has received from its clients, i.e. retailers of Dhule District, make the payment at VHPL counter and takes delivery of livestock and then safely bring them in the vehicles owned by him. This activity not only includes the transport of Live birds/poultry products but also include



taking delivery from VHPL and then bringing the live stock in proper hygienic condition to the various retailers. For doing this activity, the assessee has been charging the commission from various retailers per kg basis.

10. On perusal of the ledger account of various retailers of Dhule District which are forming part of the books of account of the assessee assets this fact is verifiable. For instance, the retailers namely, *Aamin Chikan Centre, Deopur, Babbu Chikan Centre, Deopur, Boradi Chikan Shop (Khalil Bhai), National Chikan Shop, Deopur, Kamran Chikan, Kapadna, Pappy Bhai Nagaonwale etc.*, are various accounts of the retailers for whom the assessee makes the purchase and either takes the amount in advance or takes the amount on delivery of livestock. All these details of books of account and ledger account have been provided to the AO, however, he has not rejected the book results prior to estimation. Ld. Counsel for the assessee has contended that estimation of profit without rejecting the book results in itself vitiates the assessment proceedings and the impugned addition deserves to be deleted. I however notice that although ld. AO has not specifically mentioned about the rejection of book results and has not mentioned section 145(3) of the Act, however, in the assessment order ld. AO has made certain observations which questions the correctness of books and Net Profit estimated by the assessee. So far as this plea of the assessee that books of account not being rejected will result into deletion of the impugned addition, I do not find any merit.



11. However, after considering the details filed by the assessee, financial statements for the years under appeal and considering the net profits offered by the assessee in subsequent years showing the turnover of Livestock/Poultry products equal to the amounts of goods brought from VHPL on behalf of his clients and the assessee adds back the profit which is normally the commission per kg basis and declares the sales, the activity of business of Livestock and earning commission per kg basis for transporting Livestock from VHPL to the retailers of Dhule District remain proved but the ld. AO has estimated the profit as applicable to retailer traders which is not applicable to assessee since he is engaged in the business of transportation of Livestock and is not a retailer.

12. So far as the income earned on the alleged transaction of purchases referred in the assessment order, I on considering the facts and circumstances of the case and the financial statements furnished by the assessee, the net profit offered in the past and in subsequent period and also considering the fact that assessee is mainly involved in transporting of livestock and poultry products and the income is in the nature of Commission which is earned on per kg basis, deem it proper to apply the net profit rate of 1.50% on the turnover of Rs.2,85,94,760/- referred in the assessment order and calculate the profit at Rs.4,28,921/-. However, since the assessee has already offered the profit of Rs.3,50,828/- in the income-tax return, the excess amount of profit at Rs.78,093/- is sustained in the hands of assessee. Finding of ld.CIT(A) is set aside and grounds of appeal raised on merits by the assessee is partly allowed.



13. Since the facts and circumstances for the A.Y. 2013-14 are also same, the finding given by me for the A.Y. 2012-13 will hold good *mutatis mutandis* for this assessment year as well. Since the turnover for A.Y. 2013-14 is Rs.4,11,54,943/-, the net profit @1.50% comes to Rs.6,17,324/- after reducing the net profit of Rs.4,11,190/- already offered to tax by the assessee. The remaining amount of Rs.1,46,134/- is sustained in the hands of assessee. Finding of Id.CIT(A) is set aside and the grounds of appeal raised on merits by the assessee are partly allowed.

14. In the result, both the appeals of the assessee are partly allowed as per terms indicated herein above.

Order pronounced on this 12th day of February, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/Pune; दिनांक / Dated : 12th February, 2025
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "(SMC)" बेंच, पुणे/ DR, ITAT, "(SMC)" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune