

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.432/KOL/2024
(Assessment Year: 2010-11)**

Ashok Sharma
3rd, Sitar, 6, Commissariat Road,
Hastings, Kolkata, West Bengal,
700022

(Appellant)

ITO,
Ward-40(4)
3, Govt. Place west, Kolkata,
West Bengal, 700001

(Respondent)

PAN No. AKJPS0470K

Assessee by : Shri Soumitra Choudhry, AR
Revenue by : Shri Ranu Biswas, DR

Date of hearing: 17.03.2025
Date of pronouncement : 01.04.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 03.01.2024 for the AY 2018-19.

02. The issue raised in ground no. 1 to 3 are general in nature and do not require any specific adjudication.
03. The issue raised in ground no.4,5 and 6 is against the order of Id. CIT (A) confirming the addition of ₹43,28,864/- as made by the Id. AO by estimating the income by applying the GP rate 18.82% of the total turnover i.e. 2,30,01,402/-.

04. The facts in brief are that this is second round of litigation before the Tribunal. During the first round the appeal was restored to the file of the Id. AO with a direction that the income of the assessee may be estimated by taking into account the GP rate at 18.82% in para no.3 of the appellate order in ITA No. 1378/KOL/2016 for A.Y. 2010-11 vide order dated 03.05.2019. Accordingly, the Id. AO applied the said GP rate on the total turnover and added ₹43,28,864/- to the income of the assessee by applying the GP rate at 18.82% on the turnover of ₹2,30,01,402/- without making any allowance towards expenses incurred by the assessee.
05. The Id. CIT (A) simply affirmed the said addition by upholding the order of Id. AO when the assessee did not make any submission before the Id. CIT (A).
06. After hearing the rival contentions and perusing the materials available on record, we find from the perusal of the trading and Profit and Loss account for the year ended 31.03.2010, that the expenses incurred by the assessee have not been allowed from the gross profit computed by the AO as per direction of the Tribunal. The total expenses were ₹66,07,286/- and after taking the credit of service tax in the profit and loss account of ₹28,62,240/-, the net profit worked out to 3,26,859/-. In our opinion, the credit has to be allowed for the expenses incurred by the assessee from the gross profit determined by the AO as per tribunal direction. For ready reference the profit and loss account is extracted below:-

CLIFFORD FACILITY SERVICES
Prof:- Col. Ashok Sharma (Retd). PAN No. AKJPS0470K
Recusted as per direction order dt. 03.05.2019

Trading Account for the year ended 31.03.2010

Particulars	Amount	Particulars	Amount
Salary & Wages	17162553.00	Total Receipts	23001402.00
ESI Contribution	107856.00		
PF Contribution	862661.00		
Uniform Expenses	796427.00		
Gross Profit (Ratio 18%)	4071905.00		
	23001402.00		

Profit & Loss Account for the year ended 31.03.2010			
Printing & Stationary	328820.00	Gross Profit	4071905.00
Staff Welfare	121154.00	Service Tax	2862240.00
General Expenses	223426.00		
Office Rent	144000.00		
Mess Charges	903664.00		
Travelling Expenses	373449.00		
Bank Charges	73302.00		
Rates & Taxes	370.00		
Professional Charges	60000.00		
Serve Tax	2862240.00		
Audit Fees	2000.00		
Telephone Charges	87865.00		
Motor Car & Repair	409334.00		
Repair & Maintenance	350816.00		
Professional Fees	8000.00		
Misc Expenses	207008.00		
Legal Charge	50500.00		
Advertisement	54310.00		
Subscription & Donation	6374.00		
Office Expenses	75260.00		
Professional Tax	33520.00		
NHAI Interest	180536.00		
Depreciation	51338.00		
Net Profit Transfer ToCapital A/c	326859.00		
	6934145.00		6934145.00

07. On perusal of the above Profit and Loss account it is had revealed that the expenses incurred by the assessee are to be allowed and the income cannot be estimated on the basis of GP rate alone. Accordingly, we set aside the order of the Id. CIT (A) and direct the Id. AO to allow the deduction of expenses to the assessee as per the above Profit and Loss account. The appeal of the assessee on this issue is allowed.

08. The issue raised in ground no.7, is against the confirmation of addition of ₹15,82,148/- by Id. CIT (A) as made by the Id. AO on account of cash deposited in the bank by treating the same as unexplained cash credit.
09. The facts in brief are that the assessee has made a huge deposits into and withdrawals from the bank account which according to the Id. AO were not reconciled and he accordingly added Rs.15,82,148/- to the income of the assessee as unexplained cash credit. However, on the other hands, we note that the assessee has deposited and withdrawn the money from the same bank account and these were repeated transactions done by the assessee and all are reported in the books of accounts maintained by the assessee for the business purposes. Moreover, the addition made by the Id. AO on account of deposits and withdrawals of money and any discrepancy therein cannot be made where the income has been estimated by apply the GP rate. Therefore, we set aside the order of the Id. CIT (A) and direct the Id. AO to delete the addition. The ground raised by the assessee is allowed.
010. Similarly, in ground no.8, the Id. CIT (A) confirmed the addition of ₹8,40,000/- as made by the Id. AO on account of loan and advances treating the same as income from undisclosed sources. Since, we have decided ground no.7, where the income has been estimated by applying the GP rate no additions was called for. Accordingly, we set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition. The ground is accordingly allowed.
011. The issue in ground no.9 is addition of ₹1,87,488/- on account of interest deposit.

012. After hearing the rival contentions and perusing the materials available on record, we find that the said interest represented the interest accrued on FDR with UCO bank. Therefore, the same was correctly added by the Id. AO in the assessment order and sustained by the Id. Commissioner of Income-tax (Appeals). Accordingly, we upheld the order of Id. CIT (A) on this issue by dismissing the ground no.9 of the assessee.

013. Ground no.10,11,12,13, are general in nature and do not require any adjudication.

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

Order pronounced in the open court on 01.04.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 01.04.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata