

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 13/GTY/2025
Assessment Year: 2017-18

Sanjoy Saha,

Subhash Road, Karimganj Baza,

Assam - 788711

[PAN: AHYPS6721K]

.....**Appellant**

vs.

Commissioner of Income Tax,

CIT(A), Central NER,

Guwahati - 781006

..... **Respondent**

Appearances by:

Assessee represented by

: Amit Mishra, Advocate

Department represented by

: Subrata Dhar, Addl. CIT

Date of concluding the hearing

: 30.07.2025

Date of pronouncing the order

: 06.08.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), Central NER, Guwahati [hereafter “the Ld. CIT(A)”], dated 14.11.2024.

1.1 In this case, the Ld. AO has recorded the following finding while making the impugned addition:

“The assessee uploaded cash book, sales register, purchase register, VAT returns and some other details and particulars as called for in the notice u/s 142(1). During the course of assessment proceedings the assessee stated that there was a consignment sale of Rs. 4,35,28,234/- and furnished documents of

consignment sales and uploaded copies of confirmation of account issued to him by the consigner. In the return of income the assessee has shown commission received amounting to Rs. 50,484/- only, which is only 0.11% of consignment sales of Rs. 4,35,28,234/- the assessee could not explain reason for showing meagre income received in respect of this consignment sales. The motive of the consignee is to derive higher profit in respect of consignment sales, but the assessee had shown very less amount as commission income from consignment sales. The gross profit of the assessee in the audit report for the financial year 2016-17 is 1.47% of the turnover. Hence, difference of Rs. 5,89,381/- between actual profit on consignment sales [1.47% of Rs. 4,35,28,234/- comes to Rs. 6,39,865/-, Now Rs. 6.39,865/- Rs. 50,484/- Rs. 5,89,381/-] and income in respect of consignment sales shown in the return of income is added to assessee's income under head profit from business.

1.2 Aggrieved with this action, the assessee approached the Ld. CIT(A) where also he could not succeed on the basis of the following findings:

“5.2. Decision on Ground(s) of Appeal No(s). 2:

The Appellant contended that there should not be any comparison of commission earned on consignment sales with the normal business profit margin. It is observed from records that the Appellant has shown consignment sales of Rs. 4,35,28,234/-but has shown commission on the same at Rs. 50,484/- which is just 0.11% of the consignment sales. As per the Tax Audit Report, the Gross Profit margin of the Appellant is 1.47% of turnover for the year under consideration. The AO applied the said GP margin to the consignment sales and estimated commission income at Rs. 6,39,865/-. The differential amount of Rs. 5,89,381/- was added to the business income of the Appellant.

During the appellate proceedings, the Appellant furnished some ledger accounts and explained that the comparison of margins as done in the assessment order was not justified. It was averred that commission on consignment sales has no risk and hence, margins are low. There is no merit in the Appellant's contention. The Appellant did not make any mention about the nature of his business and the margins involved therein. The Appellant did not specify the nature of risk & the quantum of investment involved in the regular business activities and the profits generated in the same. It is not clear as to how commission can be earned without risk. The basis of arriving at the margin for certain percentage of sales is not known. The explanation furnished by the Appellant is vague and not satisfactory. No documentary evidence was furnished in support of his contention. The Appellant could not substantiate his claims inspite of sufficient opportunities being provided during the assessment as well as appellate proceedings.

In view of the above discussion, it can be concluded that the AO was justified in applying the Gross Profit to commission on consignment sales. Thus, the addition of Rs. 5,89,381/- made in the assessment order is hereby confirmed. Ground No. 2 is dismissed accordingly.”

1.3 Aggrieved with this action of Ld. CIT(A), the assessee has approached the ITAT with the following grounds:

“1. That the order of the learned assessing officer is bad in law and against the natural law of justice.

2. That the learned assessing officer is wrong in comparing the commission earned on consignment transactions with the normal profit margin of the assessee and estimate commission on consignment sales suo-moto.

3. The appellant craves to urge additional grounds at the time of hearing.”

2. Before us, the Ld. AR vehemently argued that the Ld. AO did not carefully go through the documents filed before him and he has erroneously arrived at a conclusion that the commission on consignment sales @ 0.11% was less than normal for this line of business and thereafter proceeded ahead to estimate commission @ 1.47% of turnover. The Ld. AR vehemently argued that the assessee had presented the necessary documents to show that the actual commission received was 0.11% only and, on this TDS, had also been done. The Ld. AR further stated that the assessee is a stockist for M/s NESTLE and was also stockist for Bidis, and the commission rate cannot be compared for these two very different product lines. On a query from the Bench regarding the AR informing the authorities below about the nature of business and normal profit margins in the two very different businesses of the assessee, it was informed that ledger accounts of business from which the sales turnover was disclosed was placed before the authorities below. The Ld. AR concluded his arguments by assailing the orders of authorities below in as much as they did not consider the ground realities for two entirely different sets of businesses.

2.1 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the arguments of Ld. AR /DR. We have gone through the records before us, including the paper book filed by the assessee. A plain reading of the orders of authorities below [relevant

portions have been extracted (supra], would reveal that either the assessee has not clearly spelt out the entirely different nature of businesses that he was doing or the authorities below have failed to appreciate that the gross profit margins in two entirely different businesses cannot be equated on the same footing. To this extent, it appears that there was some shortcoming in the presentation of facts made at the time of impugned proceedings because there is a clear finding in para 5.2 of the impugned order that the assessee could not convincingly justify about the gross profit margin in two different businesses. In fact, it was only during arguments by the Ld. AR that this Bench could appreciate that the assessee was stockist for FMCG products (M/s NESTLE) and also Bidis. Thus, in the interests of substantive justice, we deem it fit to set aside the impugned order and remand this matter back to the file of Ld. AO for fresh assessment. The assessee would present all documents before the Ld. AO and the Ld. AO would ensure that he gives adequate opportunity of being heard.

4. In result, appeal of the assessee is allowed.

Order pronounced on 06.08.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 06.08.2025
AK, Sr. PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches