

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

**Before :**                    **Shri Mahavir Singh,    Judicial Member,    and**  
                                  **Shri M. Balaganesh,    Accountant Member**

**ITA No. 1119/Kol/2011 A.Y 2007-08**

ANAND RESTAURANT  
PAN: AAFFA2671J  
(Appellant)

Vs.

ACIT, CIRCLE-56, KOLKATA  
(Respondent)

For the Appellant/Assessee: D.K. Saha, FCA, Id.AR  
For the Respondent/Department: Shri Sanjay Mukherjee, JCIT, Id.Sr.DR

Date of Hearing: 23-02-2016

Date of Pronouncement: 23 -02-2016

**ORDER**

**SHRI M.BALAGANESH, AM**

This appeal of the assessee arises out of the order of the Learned CIT(A)-XXXVI, Kolkata in appeal no. 816/CIT(A)-XXXVI/Kol/Cir-56/09-10 dated 28/06/2011 for the assessment year 2007-08 against the order of assessment framed by the Id.AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The only issue to be decided in this appeal is with regard to estimation of suppression of sales figure by the Id.AO in the sum of Rs.28,03,693/- in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee runs a restaurant at an up-market locality in Kolkata under the name and style 'Anand Restaurant'. A survey operation u/s. 133A of the Act was conducted at the business premises of the assessee on 18-02-2008, wherein suppression of counter sales to the tune of Rs.17,650/- was

found for the date of survey. During the survey, statement on oath from the managing partner was taken by the survey team, who admitted that the firm had been suppressing its sale to the extent of 40% on an average and accordingly, offered Rs. 1 crore for taxation. Based on this statement on oath, the Id.AO estimated the suppression of sales figure at 40% on sales as reported by the assessee and made an addition of Rs.28,03,693/- for the A.Y 2008-09. The Id. AO also relied on the decision of the Hon'ble Apex Court in the case of Commissioner of Sales Tax Vs. H.M Abdulali reported in (1973) 90 ITR 271(SC), wherein it was held that once the basis of sales not declared for tax is established, it may be used as a basis for sales for the entire period. On 1<sup>st</sup> appeal before the Id.CIT(A) the assessee tried to explain that the statement on oath taken u/s. 133A of the Act on 18-02-2008 does not have any evidentiary value and any estimation made on such statement cannot be a basis for addition. Accordingly, he tried to explain that 40% of suppression of sales figures as adopted by the Id. AO is erroneous and not in accordance with law. This argument, however, did not find force in the mind of the Id.CIT(A), who proceeded to uphold the impugned addition made by the Id.AO. Aggrieved, the assessee is in appeal on the following grounds :-

*1. That the Learned CIT (A) - XXXVI is erred in Law as well as in fact in upholding the addition of Rs.28,03,693/- in the total Income of the assessee for the Financial Year 2006-07 corresponding to Assessment Year 2007-08. So, the addition of Rs.28,03,693/- is to be deleted.*

*2. That the Learned CIT (A) - XXXVI is erred in Law in taking the statement on oath from the assessee during survey Vis. 133A of the I.T. Act, 1961 on 18-02-2008 as evidence, which has no evidentiary value and is bad in Law.*

*3. That the Learned CIT (A) - XXXVI is erred in accepting the enhance Sale arbitrarily taken @ 40% ignoring the Audited Books of Accounts.*

4. Though the assessee has raised three grounds, the central ground revolves on the estimation of figure of suppression of sales. During the course of hearing before us the ld.AR argued that the estimation made by the ld.AO had no basis and there is no scope for extrapolation of the same that could arise through out the year. He argued that the sales made on a particular day being the date of survey need not be the sale through out the year. On the contrary, the ld.DR vehemently supported the orders of the lower authorities.

5. We have heard the rival submissions. The short point that arises for consideration is to estimate the sales figure that has been suppressed by the assessee going by the business trend of the assessee. On a specific query from the bench to the ld.AR with regard to estimation of suppression of sales figures at Rs. 10 lakhs, he accepted for the addition of Rs. 10 lakhs in this regard after obtaining the consent from the assessee who was also present in the court at the time of hearing. In these circumstances, we hold that of estimation of sales figures at Rs. 10 lakhs would meet the ends of justice. Hence, the ld.AO is directed to adopt the sales figure at Rs. 10 lakhs as against the addition of Rs.28,03,693/- made by the ld.AO. Accordingly, the grounds raised by the assessee are partly allowed to that extent.

6. In the result, the appeal of the assessee is partly allowed as stated above.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 23 -02- 2016

Sd/-  
( Mahavir Singh, Judicial Member )

Sd/-  
(M. Balaganesh, Accountant Member)

Date 23 -02-2016

Copy of the order forwarded to:-

- 1.. The Appellant/Assessee: M/s. Anand Restaurant 19 Chittaranjan Avenue, Kol-72.
- 2 The Respondent/Department: The ACIT, Cir-56, Kolkata
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

\*\*PRADIP SPS