

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

**ITA No.1107/(Bang/2014
(Assessment year – 2011-12)**

The Income Tax Officer,
Ward-1,
Chiradurga

Appellant

Vs

Ms. Vidya Poultry Farm,
H.R.Road,
Molakalmuru
PAN No.AADFV5885H

Respondent

**And
C.O.No.218(Bang)/2015
(Assessment year : 2011-12)
(By Assessee)**

**Revenue by : Shri Sunil Kumar Aggarwala, JCIT
Assessee by : Shri S. Venkatesan, CA**

**Date of Hearing : 11-04-2016
Date of Pronouncement : 13-04-2016**

ORDER

PER SHRI GEORGE GEORGE K, JUDICIAL MEMBER :

These two appeals, at the instances of the Revenue as well as the assessee firm, are directed against the order of the CIT (A), Hubli, dated 10.06.2014. The relevant assessment year is 2011-12.

I. ITA No.1107/B/2014-15 – By the Revenue:

2. The Revenue has, in its grounds of appeal, raised a solitary issue, namely, that *'the CIT(A) erred in directing to re-compute the income by applying*

gross profit at 18% on the said quantum of the suppressed sales to the extent of Rs.1,61,48,817/- determined.'

II. CROSS OBJECTION No.218 of Bang/2015 – By the assessee firm:

2.1. The assessee firm has, in its grounds of cross objection, also raised a solitary issue, namely, that ***'the CIT (A) was not justified in holding that there was a suppression of turnover of eggs amounting to Rs.1,61,48,817/-.'***

3. As the issues raised by the rival parties pertain to the same assessee/assessment year, the appeal of the revenue and the cross objection of the assessee firm are heard, considered together and decided, for the sake of convenience and clarity, in this consolidated order.

4. Before resorting to adjudicate the issues raised by either party, it has been brought to our reference that there was a delay of 298 days in filing the cross objection by the assessee firm. As a matter of fact, the Revenue, being aggrieved by the findings of the CIT (A) dated 10.4.2014 in the above named assessee's case, preferred an appeal before this Tribunal in Form No.36 dated 25.8.2014 whereas the assessee firm had filed its cross objection only on 28.11.2015. To justify its bona fide delay in preferring such an appeal, the assessee's counsel submitted, during the course hearing before us, that the erstwhile counsel of the assessee firm had not suitably advised the assessee to challenge the impugned order of the CIT (A) even though the assessee was aggrieved by the findings of the CIT (A). The assessee's counsel had, further, pleaded that since the assessee firm was prevented by a reasonable cause in not preferring an appeal/cross objection within the stipulated time frame and the reason being bona

fide, the delay of 298 days on the part of the assessee in preferring its appeal requires to be condoned in the interests of natural justice and equality. To substantiate its claim, the assessee firm had furnished an affidavit dated 28.11.2015 affirming its bona fide. The learned D R present was heard.

4.1. We have carefully considered rival submissions and perused the copy of affidavit furnished by the assessee firm. As the assessee firm was prevented by a reasonable cause and the same being bona fide, the delay of 298 days in filing its cross objection/appeal is condoned and admitted its cross objection for adjudication.

5. Let us now take up the issue raised by the Revenue for adjudication.

Briefly stated, the facts of the issue are as follows:

The assessee firm is engaged in the business of poultry firm. During the year under consideration, the assessee firm filed its return of income, admitting a total income of Rs.1,15,570/- which was subjected to scrutiny. After having considered the replies to the queries raised and for the detailed reasons recorded in the assessment order, the AO had concluded the assessment by determining the taxable income of the assessee firm at Rs.1,62,64,390/- thereby making an addition of Rs.1,61,48,817/- being difference of sale Proceeds of eggs admitted by the assessee and worked out by the AO,

6. Aggrieved, the assessee preferred an appeal before the CIT (A). After due consideration of the assessee's elaborate submissions which included the

comparable cases of GP on turnover in (i) M/s. Jatayu Poultry Farm, Kondlahalli, MolakalmuruTaluk; (ii) Shashidhara Poultry Farm, Mogalahalli, MolakalmuruTaluk; (iii) Sadhana Poultry Farm, Byrapura, MolakalmuruTaluk; (iv) Ravhava Poultry Farm, Mogalahalli, MolakalmuruTaluk; & Raghavendra Poultry Farm, Kodahalli, ChallakereTq and also citing various rulings of the judiciary, the CIT (A) of the view that *“(on page 17).....In view of the facts and the case laws and comparative gross profit details of the similar trade submitted by the assessee, the contentions of the AO to consider the entire suppression of sales as unaccounted income of the assessee is not justifiable for the reason that there was element of expenditure incurred in production of the eggs. Hence, it is more appropriate to go for the estimation of the gross profit on entire suppression of sales. The GP details of similar trade i.e., Poultry Farms, vary from 9 to 12% and it may be more appropriate to adopt the GP at 18% on the suppression of sales on Rs.1,61,48,817/-. AO is directed to re-compute the income by applying the GP at 18% on the suppression of sales of Rs.1,61,48,817/-.”*

7. Aggrieved, the Revenue has come up with the present appeal. During the course of hearing, the learned DR submitted that the CIT (A) erred in directing to re-compute the income by applying gross profit at 18% on the said quantum of suppression of sales to the extent of Rs.1.61 crores determined when the assessee had not produced any evidence to show that expenses were incurred for suppressed production of eggs. It was, therefore, pleaded that the findings of the CIT (A) requires to be reversed and that of the AO be restored.

8. On the other hand, the learned Counsel for the assessee submitted that the stands of the authorities below were opposed to law, facts and circumstances of the case. It was submitted that the CIT (A) was not justified in holding that there was a suppression of turnover of eggs amounting to Rs.1.61 crores under the facts and in the circumstances of the assessee's case. The learned Counsel for the assessee further argued that the CIT (A) ought to have estimated only net profit on the quantum of suppression of turnover and, therefore, the direction to assess the income by applying gross profit at 18% of the suppressed turnover is highly excessive and liable to be reduced substantially. The learned Counsel had placed reliance on (i) the findings of the earlier Bench of this Tribunal in the case of ITO v. M/s. Karthik Poultry Farm in ITA No.1106(B)/2014 dated: 6.11.2015 for the AY 2011-12 and (ii) the ruling of Hon'ble Kerala High Court in CIT v. S.P. Nayak and Ramesh M reported in 235 ITR 94 (Ker).

9. In reply Id. DR submitted that case law relied on by the assessee in the appeal of M/s Karthik Poultry Farm in ITA No.1106(B)/2014 dated 06-11-2015 for the assessment year 2011-12 were on pure trading concern, and hardly had any relevance to a poultry farming. As per the Id. DR, revenue had not taken this line of argument in the said case, leading to a decision in favour of the assessee.

10.1 We have carefully considered the rival submissions, perused the relevant materials on record and findings of the learned CIT (A) on the issue. The findings of the earlier Bench of this Tribunal in the case of M/s Karthik Poultry Farm (supra) for appreciation of facts, the relevant portions of the findings of the earlier Bench are reproduced as under:

“5.3.3. In the case on hand, the grievance of the revenue is that the assessee has not shown that it has incurred expenditure in respect of undisclosed/suppressed sales. The learned CIT (A) has proceeded to estimate the assessee’s profit @18% of the turnover after recording that entities in the same line of business, as that of the assessee in the case on hand, have shown lesser profits in the region of 9% to 12% of turnover. Merely because the expenditure incurred by the assessee in respect of this turnover has not been proved does not mean that there was no expenditure incurred at all and such a plea cannot be accepted. In such circumstances, an estimate of the probable profit has to be made having regard to the surrounding circumstances, ground realities, corroborative evidence in the form of profits shown in comparative cases and other factors that are relevant to determine the real income of the assessee. We are of the view that in the facts and circumstances of the case as laid out above, the learned CIT (A) has followed the correct and reasonable approach in estimating the profits on the suppressed turnover worked out by the AO which has not been questioned by the assessee. In our view, revenue except for raising the ground has not been able to contravene the finding of the learned CIT (A) and we are, therefore, (of the view that) no interference is called for in the finding of the learned CIT (A) in the impugned order on this issue.....”

10.1. On a careful perusal of the findings of the earlier Bench of this Tribunal (supra), it is observed that the CIT (A) as well as the Bench itself have conceded that *“5.3.3..... We are of the view that in the facts and circumstances of the case as laid out above, the learned CIT (A) has followed the correct and reasonable approach in estimating the profits on the suppressed turnover worked out by the AO which has not been questioned by the assessee....”* No doubt, the assessee could have incurred certain expenditure in the sale of eggs to the extent of Rs.1,61,48,817/-[which was worked by the AO and the same has been gracefully accepted by the assessee] outside its books of account.

10.2. The assessee firm had pleaded before the AO during the course of assessment proceedings that 20% of the sale proceeds has to be deducted on account of transportation, variation in size (of eggs), demand and supply. On

verification of the Profit and Loss, it was observed by the AO that the assessee has debited expenses towards lorry freight, hamali, wages, diesel expenses and depreciation on vehicles. As the assessee had already claimed expenses towards transportation etc., the AO was of the view that 20% deduction out of the sale proceeds was not called for. [Refer: Para 7 of the asst. order].

10.3. However, in our view, the AO was not fair in denying the assessee's legitimate claim for certain expenses for the sale of eggs to the tune of Rs.1.61 crores outside its books of account as worked by the AO. At the same time, when the assessee had effected sale of eggs to that extent outside its books of account, it may not be unaware of the expenses incurred by it for such sales. Such being the scenario, we are of the view in the interests of natural justice and equity that the issue requires verification at the AO's level. Accordingly, this issue is restored on the file of the AO with a specific direction to look into the details of the expenses incurred by the assessee firm [for having effected the sale of eggs to the tune of Rs.1.61 crores] which will be furnished by the assessee and to take appropriate action in accordance with the provisions of the Act after affording a reasonable opportunity to the assessee firm of being heard. It is ordered accordingly.

10.4. Before parting with, we would like to refer to the ratio prescribed by the Hon'ble Kerala High court in the case of CIT V. S.P. Nayak and Ramesh M (supra) which subscribes our view. For appreciation of facts, the relevant portion of the ruling of the Hon'ble Court is extracted as under:

“that the claim for expenditure was disallowed merely on the ground that the assessee failed to produce evidence. It was not the case of the assessing authority that the gross amount of Rs.7,40,747 came to the hands of the assessee without incurring any expenditure. If income was not received without incurring expenditure, then it was the duty of the assessing authority to assess expenditure by best judgment assessment, if the assessee failed to produce cogent evidence in support of his claim. However, it was not denied that the assessee failed to produce cogent evidence to prove the expenditure. Therefore, the Appellate Tribunal was not justified in allowing the full expenditure of Rs.9,31,920/- as claimed by the assessee especially in the absence of good reasons therefor.”

In substance, the Revenue’s appeal is treated as partly allowed for statistical purpose.

II. CROSS OBJECTION No.218 of Bang/2015 – By the assessee firm:

11. We have since remitted back the issue on the file of the AO for appropriate action for the reasons recorded in the Revenue’s appeal (supra), the findings recorded therein hold good in the Cross Objection of the assessee firm also.

12. **In the result:**

- (i) the Revenue’s appeal is treated as partly allowed for statistical purpose; &
- (ii) the assessee firm’s Cross Objection is also treated as partly allowed for statistical purpose..

Order pronounced in the open court on the 13th April, 2016.

Sd/-
(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER
am*

Place : Bangalore
Dated : 13-04-2016

Sd/-
(GEORGE GEORGE K)
JUDICIAL MEMBER

Copy to : 1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore