

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIALMEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.2109/Del/2015
Assessment Year: 2010-11

Labo Tek,
1/6, Kirti Nagar Industrial Area,
New Delhi.

Vs JCIT,
Circle-38,
New Delhi.

PAN: AABFL6009R

(Appellant)

(Respondent)

Assessee by	:	Shri Pranshu Singhal, Smt. Rano Jain, Advocate & Shri Venkatesh Chaurasia, Advocate
Revenue by	:	Smt. Naina Soin Kapil, Sr. DR
Date of Hearing	:	31.07.2019
Date of Pronouncement	:	13.08.2019

ORDER

PER R.K. PANDA, AM:

The appeal filed by the assessee is directed against the order dated 10th February, 2015 of the CIT(A)-20, New Delhi relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a firm engaged in the business of installation and sales of UPS and inverter systems. It consists of two partners having profit sharing ratio of 50% each. It filed its return of income on

30th September, 2010 declaring the total income at Rs.34,16,570/-. The Assessing Officer, during the course of assessment proceedings, observed that the total turnover, GP and NP of the assessee for the impugned assessment year as well as the preceding two assessment years are as under:-

A.Y.	Total Turnover	Gross Profit	Net Profit	GP Ratio	NP Ratio
2008-09	Rs.7,97,95,635/-	Rs.97,04,256/-	Rs.9,36,512/-	12.16%	1.17%
2009-10	Rs.9,23,59,949/-	Rs.1,18,02,909/-	Rs.24,63,904/-	12.78%	2.67%
2010-11	Rs.19,01,48,128/-	Rs.1,56,30,176/-	Rs.34,01,565/-	8.22%	1.79%

3. Since the assessee was not maintaining any day to day stock register and certain infirmities were found in the books of account maintained by the assessee, the Assessing Officer rejected the book results by invoking the provisions of section 145(3) and adopted the GP rate of 12.78% on the basis of the past history of the assessee and made addition of Rs.86,70,755/- to the total income of the assessee. The Assessing Officer, similarly made addition of Rs.7,51,196/- being the commission debited to the Profit & Loss Account on the ground that the persons who have received the commission have not done any service to the assessee since the assessee could not substantiate the requirement of the commission so paid. Similarly, out of the business promotion expenses claimed at Rs.12,90,329/-, the Assessing Officer disallowed 25% of such expenses on estimate basis on account of element of probable personal use. The Assessing Officer also made addition of Rs.76,000/- by invoking the provisions of section 40(a)(ia) on account of non-deduction of TDS. Similarly, he made an addition of

Rs.58,142/- out of the motor car expenses and depreciation on account of probable personal use. He also made disallowance of Rs.17,929/- out of the telephone expenses being 10% of the total expenditure of Rs.1,79,294/- on account of element of personal use. Thus, the Assessing Officer determined the total income of the assessee at Rs.1,37,73,930/-.

3.1 In appeal, the Id.CIT(A) upheld the action of the Assessing Officer in rejecting the book results and addition of Rs.86,70,755/-. She also upheld the various other additions made by the Assessing Officer on the ground that the probable personal use of telephone and motor car could not be ruled out and that the assessee could not bring any evidence to take a contrary view than the view taken by the Assessing Officer in respect of other additions.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[(CIT(A))] is bad both in the eye of law and on facts.

2(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in rejecting the books of accounts despite the same having been properly maintained by the assessee as per law.

(ii) That the learned CIT(A) has confirmed the rejection of books of accounts ignoring the explanation and evidences submitted by the assessee to rebut each of the allegation levied by the AO.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.86,70,755/- made by AO by applying the gross profit at an arbitrary rate of 12%.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the detailed explanation and evidences submitted by the assessee in support of gross profit actually earned during the year.

5(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.7,51,196/- incurred by the assessee on account of commission expenses.

(ii) That the disallowance has been made despite the fact that there is no prohibition by law and the expenses have been incurred wholly and exclusively for the purposes of business only.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.76,000/- by AO by invoking the provisions of Section 40(a)(ia) of the Act.

7(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.3,22,582/- on account of business promotion expenses.

(ii) The said disallowance has been confirmed despite the same having been made at an adhoc rate of 25% without there being any basis for the same.

8(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.58,142/- being 10% of the car expenses.

(ii) That the said disallowance has been confirmed despite the same having been made at an arbitrary rate of 10%, without there being any basis for the same.

9(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.17,929/- on account of telephone expense.

(ii) That the said disallowance has been confirmed despite the same having been made at an arbitrary rate of 10%, without there being any basis for the same.

10. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

5. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A). We have also considered the various decisions cited before us. It is an admitted fact that the assessee, in the instant case, has not maintained any stock register so as to give the details of date-wise purchase and sales of items traded and the closing stock balance position on a particular day. Similarly, notices u/s 133(6) were issued to various sundry creditors which were returned unserved on the ground that either they have left or the premises are locked or the addresses were insufficient. It is also an admitted fact that the commission paid to various parties remained unsubstantiated in absence of nature of services rendered by them. Similarly, the assessee also could not substantiate the advertisement expenses incurred by it and could not substantiate that no element of personal use is there in respect of the telephone expenses and the motor car running expenses. Under these circumstances and in view of the various infirmities pointed out by the Assessing Officer, we hold that the Id.CIT(A) was fully justified in upholding the action of the Assessing Officer in rejecting the book results and going for estimation of the profits.

6. Now, coming to the rate of profit to be adopted, we find the turnover of the assessee during the impugned year has gone up substantially. It has gone up to Rs.19.01 crore as against Rs.9.24 crore in the immediately preceding assessment year. When the turnover grows substantially, it is quite possible that the rate of GP and rate of NP will come down. A perusal of the results shown by the assessee for

the impugned assessment year as well as the immediately preceding assessment years shows that the net profit in the impugned assessment year has been shown at 1.79% whereas it was 2.67% during 2009-10 and 1.17% during assessment year 2008-09. Since the net profit ratio is fluctuating which was shown at 1.17% at 2008-09, 2.67% for assessment year 2009-10 and 1.79% for assessment year 2010-11, therefore, the profit declared at 1.79% during the impugned assessment year cannot be accepted. Considering the totality of the facts of the case and considering the fact that the books of account of the assessee are audited and the auditors have not pointed out any defects and the turnover of the assessee has gone up substantially during the year as against the immediately preceding assessment years, therefore, we deem it proper to adopt the net profit ratio of 1.88% which is the average of the current year as well as the two immediately preceding assessment years. The Assessing Officer is directed to recompute the addition to be made on the basis of the net profit ratio as against the GP ratio adopted by him and upheld by the CIT(A). Since we are going for net profit addition, the various other additions made by the Assessing Officer and sustained by the CIT(A), in our opinion, do not require any separate addition and the same are liable to be deleted. The grounds raised by the assessee are accordingly partly allowed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 13.08.2019.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 13th August, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi