

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.68 & 69/Chny/2022
निर्धारण वर्ष /Assessment Years: 2015-16 & 2016-17

M/s.Al Aziz Broilers,
No.18/231,
Amman Koil Street,
Chennai-600 001.
[PAN: AAMFA 5645 F]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Central Circle-1(4),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.B.Ramakrishnan, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.D.Hema Bhupal, JCIT
सुनवाई की तारीख/Date of Hearing	:	21.06.2022
घोषणा की तारीख /Date of Pronouncement	:	01.07.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-18, Chennai, both dated 30.11.2021 and pertains to assessment years 2015-16 & 2016-17.

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2015-16, are re-produced as under:

1. The order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.

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2. *For that the Learned Commissioner of Income Tax(Appeals) erred in confirming the Gross profit margin at a high rate calculated on the basis of subsequent year's figures.*

3. *For that the Learned Commissioner of Income Tax (Appeals) erred in estimating the general expenditures at low rate amounting to Rs.35,00,000/- without any basis.*

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the above additions and/or pass such other orders as this Hon'ble Tribunal may deem fit.

3. The brief facts of the case are that M/s.Al Aziz Broilers is a partnership firm which is engaged in supplying chicken to M/s.SS Hyderabad Biriyani Pvt. Ltd., a company which operates Biriyani Outlets in Chennai. A search and seizure operation u/s.132 of the Act, was conducted in the case of M/s.SS Hyderabad Biriyani Pvt. Ltd., and as a corollary, the residential premises of Mr.Abdul Subhan, partner of the assessee's firm was also searched on 24.08.2015. During the course of search, certain incriminating material being note book, etc., pertaining to the firm, M/s.Al Aziz Broilers, was found. Consequent to search, the case has been taken up for assessment and during the course of assessment proceedings, the AO noticed that for the months of April & May, 2015, the firm has paid purchase rate Rs.61-80/- per KG of chicken and released sales price of Rs.71-92 per KG. The AO further noted that the average purchase rate for above two months works out to Rs.70.50 per KG and average sale price works out to Rs.81.50 per KG. Therefore, opined that the assessee has earned a profit margin of Rs.11/- per KG. Therefore, taking into account difference between average purchase rate and average sale rate of two months, the AO has estimated total gross profit earned by the assessee for whole year on the basis of total birds purchased for the year and determined gross

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profit of Rs.1,96,82,333/-. The AO further noted that the assessee has claimed various expenditure in the P & L A/c. However, could not produce necessary evidences and thus, rejected the books of accounts maintained by the assessee and estimated total expenditure of Rs.30 lakhs for whole year. Thus, after considering probable gross profit earned by the assessee of Rs.1,96,82,333/-, the AO has reduced Revenue expenditure of Rs.30 lakhs and determined the net profit for the year at 1,66,82,333/-, and assessed to tax.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed Written Submissions on the issue, which has been reproduced at Page Nos.14-23 of order of the Ld.CIT(A). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that extrapolation of gross profit earned for the period of two months to subsequent 10 months in a financial year is incorrect without considering the nature of business and risk involved in the said business. The Ld.CIT(A) after considering the relevant submissions of the assessee, has affirmed the findings of the AO in determining the profit margin of Rs.11/- per KG on the basis of difference between average purchase rate and average sale rate of two months and extrapolation of said difference to whole year. However, when it comes to estimation of expenses, the Ld.CIT(A) after taking note of relevant facts has directed the AO to estimate total administrative expenses at Rs.35

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lakhs as against Rs.30 lakhs. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in confirming the gross profit margin at higher rate calculated on the basis of subsequent year figures without appreciating the fact that there cannot be any uniformity in purchase and selling rate of chicken, because, the rates are purely depending upon various factors, including demand and supply and other geographical reasons like weather conditions, etc. The Ld.AR for the assessee had also agitated estimation of total administrative expenses at Rs.35 lakhs by ignoring financial statement filed by the assessee, where the assessee has claimed various expenditure, which are necessary for running the business. Therefore, a reasonable estimate may be made towards gross profit and expenses.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that incriminating material found during the course of search, suggest gross profit margin of Rs.11/- per KG and on said basis, the AO has extrapolated gross profit margin to whole year, because, the assessee could not file necessary evidences in support of financial statement filed for the relevant assessment year. The Ld.DR, further submitted that the assessee could not even file bills and vouchers in support of various expenses. Therefore, the AO as well as the Ld.CIT(A) have rightly estimated administrative expenses and thus, there is no reason to deviate

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from the reasoning given by the authorities below to estimate gross profit and expenses.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that incriminating material found during the course of search, contains purchase and sales details of April, 2015 & May, 2015. As per the said incriminating material, the average purchase rate of chicken for 2 months' period was at Rs.70.50 per KG and average sale rate for two months was at Rs.81.50 per KG. Thus, there is a difference of Rs.11/- per KG when you compare purchase and sale rate. In fact, the assessee does not disputed these facts. The only dispute is with regard to the extrapolation of said margin to remaining 10 months of the FY 2015-16 relevant to AY 2016-17 and whole FY 2014-15 relevant to AY 2015-16. The AO has adopted gross margin of Rs.11/- per KG for whole year and estimated gross profit on the basis of total quantity of chicken purchased by the assessee. The AO, while arriving at total chicken purchased by the assessee, has allowed 10% on account of weight loss. It was the contention of the assessee before the AO as well as the Ld.CIT(A) that based on two months' gross margin earned by the assessee, there cannot be any extrapolation for remaining period, because the chicken prices varies from period to period depending upon various factors including demand and supply and other geographical reasons like weather conditions, etc. The assessee further contended that it has maintained books of accounts and

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such books of accounts are audited by an Accountant and the AO has not noticed any discrepancy in the books of accounts. Therefore, rejection of books of accounts and estimation of gross profit that too on the basis of extrapolation of gross profit of part period to whole year is incorrect.

8. Having heard both sides and considered the relevant materials, we find force in the arguments of the assessee for the simple reason that there cannot be any uniformity in purchase and sale rate of chicks and birds. The rates of chicken varies and is highly flexible and varies frequently depending upon various factors including demand and supply and other geographical reasons like weather conditions, etc. Further, the products sold by the assessee is highly perishable and there is a possibility of pilferage and loss due to various conditions. Therefore, on the basis of two months' statistics, there cannot be any estimation of gross profit for the remaining period and subsequent period. In this case, the AO has taken total purchases of the assessee and has allowed 10% on account of weight loss and has applied profit margin of Rs.11/- per KG for whole year and estimated gross profit. In our considered view, the procedure followed by the AO to determine gross profit, is not in accordance with law.

9. Having said so, let us come back to the arguments of the assessee. Although, the assessee claims to have maintained books of accounts, but, it was the observation of the AO that the books of accounts maintained by the assessee are not proper and further, not supported by necessary evidences. Therefore, once there is a finding from the AO, about

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incorrectness of books of accounts maintained by the assessee, the gross profit declared on the basis of said books, cannot be considered as true and correct. Therefore, we are of the considered view that under these facts and circumstances, a reasonable estimation towards gross profit taking into account, the nature of business carried out by the assessee and risk involved in the said business is only a solution. Hence, considering the facts and circumstances of the case, we are of the considered view that the profit margin estimated by the AO is higher side and thus, direct the AO to estimate gross profit of 8% on total sales declared by the assessee for both the assessment years.

10. Coming back to estimation of administrative expenses. The AO has rejected books of accounts and estimated administrative expenses for whole year at Rs.30 lakhs which includes, remuneration, salaries and wages, depreciation, etc. For the Financial Year relevant to the AY 2015-16, the assessee has claimed total expenses of Rs.43,56,957/- and as against this, the Ld.CIT(A) has estimated total expenses of Rs.35 lakhs, which works out to 80% of total expenses claimed by the assessee. The assessee claims that estimation made by the AO and the Ld.CIT(A) is on lower side when compare to nature of business. Except this, the assessee could not even justified various expenditure debited into P & L A/c. At the same time, there is no basis for the AO/the Ld.CIT(A) to determine administrative expenses at Rs.35 lakhs. Therefore, taking into account, the nature of business of the assessee and also the reasons given by the

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AO to estimate administrative expenses, we are of the considered view that both have failed to justify their case with necessary reasons and thus, we direct the AO to allow 90% of total expenses claimed by the assessee in their financial statement filed for the relevant assessment year and re-compute profit from the business taking into account gross profit @8% on total sales and allow 90% of expenses as claimed by the assessee.

11. In the result, the appeals filed by the assessee for both the assessment years are partly allowed.

Order pronounced on the 01st day of July, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 01st July, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |