

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं

डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

Before

SH. SANJAY GARG, JUDICIAL MEMBER

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 969/Kol/2017

Assessment Year: 2010-11

Tarun Chakraborty.....Appellant
[PAN: ACXPC 2627 A]

Vs.

JCIT, Range-53

Now ITO, Ward-26(4), Kolkata.....Respondent

Appearances by:

Sh. R.S. Ghosal, Adv. &

Sh. V.N. Dutta, Adv., appeared on behalf of the Assessee.

Sh. Partha Pratim Barman, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : September 6th, 2022

Date of pronouncing the order : November 11th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to Assessment Year (in short "AY") 2010-11 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld.

Commissioner of Income-tax (Appeals)-7, Kolkata [in short ld. "CIT(A)"] dated 31.03.2017 arising out of the assessment order framed u/s 143(3) of the Act dated 14.03.2013.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"1. For that the order of the lower authorities both appellate order and the assessment order u/s 143(3)/144 of the Act are an arbitrary, opposed to requirement of law and bad in law.

2. For that the assessment made under the head best judgments assessments by the lower authorities below is neither tenable in law nor in facts.

3. For that determination of the income under best judgments assessments is neither tenable in law nor in fact and is without basis.

4. For that the determination of expenses at the rate 50% of the income determined under head interest income of Rs. 1,76,198/-and C & F Commission of Rs. 63,30,042/- respectively are unjustified, without basis and is neither tenable in law nor in fact.

5. For that the determination of the income by the lower authorities of Rs.48,49,506/- under the head of contractual activity is neither tenable in law nor in facts and is without having any basis.

6. For that the direction of verification in respect of rental income of Rs. 5,31,743/- before the assessing officer is an unjustified and uncalled for.

7. For that the addition of Rs. 8,68,824/- being 15% under the head excess wastage of brick by the lower authorities is without basis and uncalled for.

8. For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal."

3. Brief facts of the case are that the assessee is an individual carrying on the business under sole proprietorship concern namely M/s. Chakraborty Enterprise and M/s. Maa Bricks Field

and engaged in the business as C & F Agent of Lafarge India Pvt. Ltd. and brick manufacturing. The assessee declared income of Rs. 41,01,170/- in the return of income filed on 12.10.2010 for AY 2010-11. After the case being selected for scrutiny followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. AO called for various details from the assessee about the two sole proprietorship concerns. Part of the details were filed but for lack of proper submissions, ld. AO estimated the profit from the contractual activity at 30% of the contract value of Rs. 1,61,65,022/- and calculated it at Rs. 48,49,506/-. Ld. AO also made the addition for undisclosed income of C & F commission at Rs. 63,30,042/-, unaccounted rent income from Lafarge India Pvt. Ltd. at Rs. 5,31,743/- and interest income from Lafarge India Pvt. Ltd. at Rs. 1,76,198/-. Similarly, ld. AO also made addition for suppressed sales of bricks at Rs. 17,37,648/-. Income assessed at Rs. 1,47,65,772/- and assessment was completed u/s 143(3) r.w.s. 144 of the Act.

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) and partly succeeded, however, most of the additions confirmed by ld. AO were further confirmed by ld. CIT(A).

5. Aggrieved assessee is now in appeal before this Tribunal raising various grounds of appeal.

6. Ld. Counsel for the assessee vehemently argued referring to various written submissions filed before the lower authorities as well as the details of comparative chart of net profit for past three years, certificate issued by Lafarge for the receipt of reimbursement from Lafarge India Pvt. Ltd. for expenses, copy of

agreement and other relevant details placed in the paper book filed on 29.05.2022.

7. Per contra, ld. D/R vehemently argued supporting the orders of both the lower authorities.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the paper book filed by the assessee containing 65 pages which also includes the remand report from ld. AO given during the course of hearing before ld. CIT(A) placed at page 60 & 60A of the paper book. We observe that the assessee is a C & F agent of M/s. Lafarge India Pvt. Ltd. and earns income from commission, C & F charges and reimbursement of expenses, interest on security deposits etc. The assessee also carries on the business of manufacturing and sale of bricks. Business of commission as C & F agent is carried out in the name of the sole proprietorship concern named M/s. Chakraborty Enterprise and business of bricks is run in the name of M/s. Maa Bricks Field. During the course of assessment proceedings, the assessee could file the partial details for the reason that books of accounts were lost and in support the copy of complaint lodged with Tollygunge Police Station on 10.04.2012 was filed. A survey was also conducted at the business premises of the assessee u/s 133A of the Act on 19.03.2012. The assessment proceedings for AY 2010-11 were carried out with whatever material including Form no. 26AS available on the website of the Income Tax Department and the bank statements. Since the assessee could not furnish requisite details as required, the assessment was framed u/s 143(3)/144 of the Act making

various additions including estimation of income from commission and undisclosed income for the alleged suppressed sales.

9. As far as ground nos. 1, 2 & 3 of the assessee's appeal are concerned challenging the validity of the assessment order, we find no merit in the contention raised by the assessee and are of the considered view that ld. AO gave sufficient opportunity to the assessee and with whatever details were available a best judgment assessment has been framed and thus, the assessment order cannot be said to be bad in law. Thus, ground nos. 1, 2 & 3 are dismissed.

10. As regards ground nos. 4, 5 & 6 of the assessee's appeal are concerned they relate to the addition made on various counts including estimation of interest income, estimation of C & F commission @ 50% and then estimation of profit on the sales made during the year under the business carried out in the name of M/s. Chakraborty Enterprise. We observe that the assessee is regularly maintaining the books of account in the past and copies of audited profit & loss account for FYs 2006-07, 2007-08 and 2008-09 are placed on record. So far as the details for AY 2010-11 is concerned though the assessee could not furnish the books of account nor could file the audited financial statement but certain other details are furnished which includes the statement of net profit ratio for the year under appeal and the preceding three years, copy of VAT returns for the FY 2009-10 and also statement of income and expenditure of M/s. Chakraborty Enterprise which is prepared taking the basis of the receipts shown as per Form no. 26AS which shows the receipts during the year under various heads from M/s.

Lafarge India Pvt. Ltd. and based on these statements, the assessee has reconciled the profit offered by the assessee in the income tax return.

11. We also note that in the past the net profit offered in the income tax return was ranging between 7% to 10% of the total gross receipts during the year which included C & F charges, commission, interest on security deposits and sales. So far as the year under appeal is concerned, we find that on the total turnover of Rs. 2,55,01,160/- net profit offered by the assessee is 2,96,535/- which is 11.61%. As against this, the profit offered by the assessee, ld. AO has assessed the profits at 46.62% of the total turnover as per the return. The perusal of the records shows that the assessee is consistently into this business and all the receipts from M/s. Lafarge India Pvt. Ltd. are duly accounted for in the statement of income and expenditure filed by the assessee giving the overall description of the receipt from Lafarge India Pvt. Ltd., gross profit from damaged cement sold and has submitted the reconciliation showing receipts, reimbursement, direct expenditures incurred by the assessee and other expenses incurred and the extract of the same is reproduced below:

PARTICULARS	AMOUNT
Receipts as per 26AS	23447412.87
Gross Profit from Damage cement sold (Anexture-1)	456089.96
Total Receipts	23903502.83
Less : Receipts as reimbursement from Lafarge (Certificate issued by Lafarge - Annexure -2)	-19744324.00

	4159178.83
Less: Expenditure Directly incurred by the Assessee- (Annexure -3)	698146.00
	3461032.83
Less: Expenditure Directly incurred by the Assessee on estimated like Travelling & Conveyance. Telephone Charges, Electricity Charges, Printing Stationery, Tea & Tiffin Etc.	500497.83
Net profit offered by the Assessee	2960535.00

12. Ld. CIT(A) failed to give relief on these grounds for the lack of necessary details filed by the assessee. However, looking to the fact that the assessee has declared 11.61% net profit on the gross receipts which is higher than the net profit rate offered in the past and also observing that the net profit rate adopted by ld. AO 46.62% is much higher and that too for the reason that the assessee could not produce books of accounts and audited report since they were lost and the assessee could not find the copy of the same, the assessee will be hit hard if the net profit rate of 46.62% is applied on the assessee. Looking to the consistency of the business, C & F charges and commission income being received from limited company and the receipts are duly accounted for in Form no. 26AS and they are also getting reflected in the bank statement and there being no other business carried out under the name of M/s. Chakraborty Enterprise which remained undisclosed and simultaneously also considering the fact that both the lower authorities could not examine the correctness of the assessee's income for the year due to lack of evidences and necessary details,

we, in order to put an end to the controversy and in the interest of justice and being fair to both the parties, hold to apply net profit rate of 14% on the total turnover of M/s. Chakraborty Enterprise of Rs. 2,55,01,160/- on applying this net profit rate, the profit for the year of M/s. Chakraborty Enterprise will be Rs. 35,70,162/- and against this amount since the assessee has already offered the net profit at Rs. 29,60,535/- the remaining amount of Rs. 6,09,627/- is the addition confirmed in the hands of the assessee. Thus, the total additions challenged by the assessee in ground nos. 4, 5 & 6 are sustained to Rs. 6,09,627/- and the remaining additions made are hereby deleted. Thus, ground nos. 4, 5 & 6 are partly allowed.

13. As regards ground no. 7 for the addition of Rs. 8,68,824/- being made for excess wastage of bricks shown by the assessee, we find that the assessee carries on the business of manufacturing and sale of bricks in the name of M/s. Maa Bricks Field. This business is being carried out consistently for past many years. For AY 2007-08 to AY 2009-10 the net profit offered in the total turnover is ranging between 2.6% to 4.75%. For the year under appeal net profit shown by the assessee is 4.35%. The income estimated by ld. AO is almost 95.87% which has been partly deleted by ld. CIT(A). Though there is a finding of the lower authorities that there was suppression of sales but that is not supported by any credible evidences and only estimation has been made about the excess wastage claimed by the assessee.

14. We find that the assessee gave complete production details of the manufacturing of bricks before ld. AO and against the total

consumption of 1,29,845 Cubic Feet of soil purchased from West Bengal Government, the assessee manufactured a saleable quantity of 6,18,000 pieces of bricks. Ld. AO has only referred to the excess wastage as suppressed sales. However, looking to the consistency of the business carried out by the assessee in the past and the financial statements being audited and accepted by the Revenue authorities, we, in order to bring the end to the controversy and being fair to both the parties estimate a net profit of 8% on the gross turnover of M/s. Maa Bricks Field shown at Rs. 18,98,680/- and compute the profit at Rs. 1,51,894/- and after deducting the profit offered by the assessee in the profit & loss account at Rs. 82,547/-, the remaining amount of Rs. 69,347/- is the income confirmed in the hands of the assessee. Assessee gets relief of Rs. 7,99,477/-. Thus, ground no. 7 of the assessee's appeal is partly allowed.

15. Ground no. 8 is general in nature which needs no adjudication.

16. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 11th November, 2022.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 11.11.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Tarun Chakraborty, 3A, Satyendra Roy Road, 2nd Floor, Flat No. 6, Kolkata- 700 026.**
- 2. JCIT, Range-53, Now ITO, Ward-26(4), Kolkata.**
3. CIT(A)-7, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata