

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'B' CHANDIGARH**

**BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 539/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2017-18

Satwinder Kaur Balachor, Dulchimajra, Chamkaur Sahib, Ropar.	VS	The ITO, Ward 2(4), Ropar.
स्थायी लेखा सं./PAN /TAN No: ADAFS8773K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/Revenue by : Shri Dharamvir, JCIT, Sr.DR

तारीख/Date of Hearing : 07.06.2023

उद्घोषणा की तारीख/Date of Pronouncement : 19.06.2023

**आदेश/ORDER**

**PER VIKRAM SINGH YADAV, A.M.**

This is an appeal filed by the assessee against the order of Id. CIT(A) NFAC, Delhi dated 28.03.2022 pertaining to assessment year 2017-18 wherein it has taken the following grounds of appeal:

- 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in passing an ex-parte order without affording a proper opportunity of hearing which is arbitrary and unjustified.*
- 2. Without prejudice to the above, the Ld. Commissioner of Income tax (Appeals) has erred in upholding the addition of Rs.32,75,791/- made by applying profit rate of 2% on sales of Rs. 16,37,89,560/- which is arbitrary and unjustified.*

3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
4. *That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.*

2. Briefly the facts of the case are that the assessee is engaged in retail sale of liquor and has been allotted liquor vendis in District SBS Nagar by the District Excise & Taxation Authorities. In the year under consideration, the assessee has not filed any return of income, basis information gathered during the course of on-line verification under operation "Clean Money", the AO observed that the assessee had deposited a sum of Rs.14,52,500/- in its bank account during the de-monetization period. Further, the information was called for the assessee's bank u/s 133(6) and on perusal of the bank statement, it was observed by the AO that the assessee had made cash transactions in his bank account amounting to Rs.1,28,13,761/-. Subsequently, notice u/s 142(1) was issued calling the assessee to prepare a true and correct return of income. However, there was no compliance on the part of the assessee. Thereafter, a show Cause alongwith notice u/s 142(1) was issued and in response to the same, the assessee furnished written explanation alongwith copy of the partnership deed, copy of bank statement, copy of the registration with the Excise & Taxation Department, Trading and Profit & Loss Account, Balance Sheet, Capital Account of the partners, Form No. 26AS, details of rent paid,

salary paid to the workers etc. The AO carried out the examination of the information/documentation so submitted by the assessee and it was observed that the assessee firm has not furnished any Tax Audit Report and the other reply submitted by the assessee was also without any supporting documentation. Further, the sales figures of Rs.16,37,89,560/- were also without any sales account and thereafter, a Show Cause u/s 145(3) was issued as to why the book profits may not be rejected and net profit @ 10% may not be applied on the total sales for computing estimated business income in absence of complete books of account, ledger, cash book, bills and vouchers in respect of expenses debited in the Profit & Loss Account. In response to the show cause, again there was no response submitted by the assessee. Thereafter, the AO proceeded with the best judgement proceedings u/s 144 of the Act.

3. As per the AO, the assessee was running a liquor trading business and has shown huge turnover of Rs.16,37,89,560/- against purchases of Rs.3,41,84,536/- and has shown loss of Rs.12,14,160/-. It was further observed by the AO that the assessee has claimed various expenses such as Excise Duty, cartage, rent, electricity expenses, salary, travelling etc. and the claim of such expenses were not denied but the assessee was required to maintain and keep the records of the sales and purchases as well as expenses which the assessee did not furnish

in the instant case. Since the assessee failed to furnish corroborative documents, the book results were held to be not representing true and correct affairs and the same were rejected u/s 145(3) of the Act. It was further observed by the AO that in cases of retail liquor business, normal net profit in the range of 1 to 3% is prevalent in different areas of liquor shops during the year under consideration and by applying the average net profit rate of 2% on total sales of Rs.16,37,89,560/-, a net profit of Rs.32,75,791/- was determined and treated as 'income from business and profession' and same was brought to tax in the hands of the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) and therein also we find that there was no compliance on the part of the assessee. Basis material available on record, the ld. CIT(A) has recorded his findings stating that the assessee has failed to keep and maintain books of account, there is a failure to get its accounts audited, the Tax Audit Report was not filed, that the assessee failed to file income tax return u/s 139 or in response to notice u/s 142(1), that the assessee did not give supporting documents in support of the expenses claimed in the Profit & Loss Account. There was, thus, massive non compliance to the various notices issued by the AO during the course of assessment proceedings and therefore, the AO rightly rejected the book results as shown in the Profit & Loss

Account and passed the best judgement order u/s 144 of the Act. It was further held by the ld. CIT(A) that AO has taken the taxable profit at a rate which was middling from sources available with him and therefore, it cannot be held that the AO resorted to any high pitched assessment and accordingly, the findings of the AO were confirmed and the matter was decided against the assessee.

5. Being aggrieved, the assessee is again in appeal before us. During the course of hearing, the ld. AR did not press ground No.1 of the assessee's appeal. Hence, the same is dismissed as not pressed.

6. In ground No.2, the assessee has challenged the application of net profit rate of 2% on the declared sales of Rs.16,37,89,560/-. It was submitted that the same is on a higher side and the same may be brought to a reasonable level given the fact that the period under consideration, there was Covid Pandemic and the business has suffered heavy losses and which has resulted in losses during the year. It was further submitted that the penalty proceedings since initiated u/s 271A has since been dropped by the AO and therefore, it is not in dispute that the assessee has not maintained books of account as required u/s 44AA of the Act.

7. Per contra, ld. DR has relied on the order of the lower authorities. It was submitted that there is a complete non compliance on the part of the assessee right from non filing of the return of income to response to the various notices issued from time to time as well as the final Show Cause Notice issued by the AO. Therefore, left with no option, the AO had proceeded with the best judgement assessment and has determined a profit rate of 2% on the declared turnover which cannot be termed as unreasonable given the line of business, the assessee operates in. It was further submitted that even before the ld. CIT(A), the assessee has not taken any efforts in making any submissions and therefore, the ld. CIT(A) has taken into consideration the entire conduct of the assessee during the course of assessment proceedings and has confirmed the findings of the AO holding the same to be reasonable and not resulting in any high pitched assessment. It was, accordingly, submitted that the assessee does not deserve any relief in the matter and therefore, the appeal so filed by the assessee be dismissed.

8. We have heard the rival contentions and purused the material available on record. The limited issue under consideration relates to applicability of net profit rate by the AO once the books results have been rejected by the AO invoking provisions of section 145(3) of the Act. The AO has taken the average of net profit which varies from 1-3% in the assessee's

line of business which is retail sale of liquor and has thus applied net profit rate of 2%. Nothing has been brought on record to rebut the said findings of the AO in terms of net profit prevailing in the retail liquor business in terms of any other comparative third party data. In view of the same, we do not see any perversity in the findings of the AO who has rightly applied the average of net profit prevailing in the assessee's line of business and that of the 1d CIT(A) who has rightly confirmed the findings of the AO finding the same to be reasonable.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 19.06.2023.

**Sd/-**

**Sd/-**

**आकाश दीप जैन**  
**(AAKASH DEEP JAIN)**  
**उपाध्यक्ष / VICE PRESIDENT**

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकारण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar