

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1400/DEL/2021  
Assessment Year: 2015-16**

Rajendra Shankar Singhal, W-24, Okhla Industrial Area, Phase-II, New Delhi-110020 PAN- AFBPS3911C	<u>Vs</u>	Income-tax Officer, Ward-28(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri D.M. Sinha, Adv.	
<b>Department represented by</b>	Shri Gurpreet Singh, Sr. DR	
<b>Date of hearing</b>	05.06.2023	
<b>Date of pronouncement</b>	30.06.2023	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-10, New Delhi, dated 13.11.2019, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

- “1. Order is bad in law in and facts of the case.
2. It is bad to calculate profit @ 8% on the turnover.”

2. There is a delay of 545 days in filing the present appeal before the Tribunal. An application, seeking condonation of delay in filing the appeal before the Tribunal, has been preferred on behalf of the assessee. It is stated that the order dated 13.11.2019, passed by the learned CIT(Appeals) was received by the assessee on 28.12.2019. However, the appeal was filed on 07.10.2021. The delay in filing the appeal is stated to have been caused due to outbreak of Covid-19 pandemic. It is prayed that the delay in filing the appeal may be condoned as per the decision dated 08.03.2021 of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 and further a liberal approach may be taken.

3. On the other hand, learned DR opposed the contention of the assessee.

4. We have heard rival contentions. Admittedly, the order of learned CIT(Appeals) was passed on 13.11.2019, which, as per assessee, was received by him on 28.11.2019. The appeal was required to be filed before the Tribunal within 60 days from the date of receipt of the order. It is stated that there was outbreak of C-19 pandemic and lock down was also imposed on 22.03.2020. Undisputedly the country has witnessed unprecedented spread of pandemic. Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 (supra), we are inclined to condone the delay in filing of the appeal and the appeal is taken up for hearing.

5. The facts giving rise to the present appeal are that in this case return of income was filed on 28.09.2015 declaring total income at Rs. 3,74,240/-. The case was selected for scrutiny assessment. During the course of assessment it was noticed that assessee had disclosed purchases amounting to Rs. 3,45,16,372/- and duty paid Nil, whereas as per AIR information total purchases were Rs. 11,10,63,434/- and duty paid was Rs. 15,39,936/-. Thus, as per AO, the assessee had suppressed purchases by Rs. 7,80,86,998/- and made addition of Rs. 62,46,959/- being 8% of purchases of the assessee. Thus, assessed income at Rs. 66,21,199/- against the declared income of Rs. 3,74,240/-.

6. Aggrieved against it the assessee preferred appeal to the learned CIT(Appeals), who after considering the submissions, confirmed the addition made by the AO. Now the assessee is in appeal before this Tribunal.

7. Learned counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity the submissions of the assessee are reproduced as under:

*“It is respectfully submitted as under:*

1. *That the Assessment for AY. 2015-16 was completed by the Assessing Officer on 30.12.2017 and subsequently it was confirmed by the Learned C.I.T. (Appeal) vide order dated. 13.11.2019;*
2. *That facts of the case are:*
  - a. *that the assessee had filed income tax return of Net Income of*

Rs. . 5,21,651.00 (Rupees Five Lacs Twenty One Thousand Six Hundred Fifty One Only).

- b. *That the assessee in compliance with the provisions of I.T. Act 1961 is required to maintain books of accounts and Audited by C.A.*
- c. *That the total income as declared in the return has been accepted by the Assessing Officer.*
- d. *That the assessee has purchased goods during the course of import to the extent of Rs. 3,45,16,372.00 and the same were sold for an amount of Rs.3,41,73,354.00 Hence, the assessee has earned amounting to Rs. 5,24,241.00.*
- e. *That all supporting documents were duly filed during the course of the assessment proceedings with ITO Ward 28(1) New Delhi*
- f. *That the case selected for scrutiny through CASS*
- g. *Assessment completed as it is completed after reopening of the assessment.*
- h. *Information received through AIR about the total purchase of rs 11,10,63,434/ Difference of Purchase shown is taxed @8%*

#### **ORDER IS BAD IN LAW AND FACTS OF THE CASE**

- i. *Assessee filed Income tax Return with ITO Ward 28(1) all documents submitted during the course assessment proceeding .Last year penalty proceedings were also completed by ITO ward 28(1).Order framed by ITO Ward 28(2). Hence the order is with ought Jurisdiction.*
- j. *That case was selected for scrutiny through CASS, The CBDT instruction has not followed, hence order is bad and with ought Jurisdiction.*
- k. *That Ld. ITO has framed an reopening assessment u/s 143(3)/147 of the Act, hence bad in law.*

*l. No opportunity was given to the assessee to explain the case, and the information received was never confronted/shared with the assessee.*

*m. That the return income were duly accepted*

**IT IS BAD TO CALCULATE INCOME @8%**

<i>DESCRIPTION</i>	<i>PURCHASE</i>	<i>NET INCOME ASSESSED</i>	<i>% PROFIT ASSESSED</i>
<i>Return filed showing</i>	<i>3,45,16,372/-</i>	<i>5,24,241/-</i>	<i>1.52%</i>
<i>Upon AIR Information</i>	<i>7,80,86,998</i>	<i>62,46,959</i>	<i>8%</i>

*In the light of the above submission, it is therefore most humbly pray that the order of the Ld Commissioner dt, 13.11.2019 and order dt 3.12.2017 be quash and the returned income is to be accepted/ and or any other relief which this h'ble court may deem fit may kindly be granted."*

8. On the other hand, learned DR supported the orders of the authorities below.

9. We have heard rival submissions and perused the material available on record. We find that in this case the assessee has shown income of Rs. 5,24,241/- by applying net profit rate of 1.52% on purchases of Rs. 3,45,16,372. However, it had come to notice of AO that the purchases amounting to Rs. 7,80,86,998/- was not disclosed by the assessee in his books of account. The AO following his order for assessment year 2014-15 made addition of Rs. 62,49,959/- being 8% of purchase that was not disclosed by the assessee in his books of accounts. The learned CIT(Appeals) sustained the impugned addition by observing as under:

*“6.1 Ground No. 1 and 3 are general in nature and do not require any specific adjudication. Ground No.2 is with regard to addition of Rs.62,46,959/- made by the AO. During the appellate proceedings, appellant has submitted that he is engaged in the business of import and sale of Almonds from USA, which is a perishable item and during the year he made import of 13 lots of container and sold 8 lots of container on high sea basis at the port itself because transit time from USA to India in rainy season becomes considerable and breaking and processing of the almonds for the purpose of the sale is not possible to be completed in the stipulated time period of 6 months as per FSSAI rules which have been made applicable on food products from 2013 and as per above rules the shelf life of the food products has been fixed for 6 months. He has explained that FSSAI rules are imposed at the time of clearance of the goods imported to the Indian ports and a random sample is sent to the laboratory of the above authority for approval and after verification goods used to be released, which delays the whole process leaving less time for processing of the goods making it marketable.*

*6.2 Apart from the above, with regard to margin of profit, it has been explained that the estimate of 8% applied by the AO is on higher side applying the findings of the AO while completing the assessment for the AY 2014-15 when the books of accounts were not audited whereas in the year under consideration the profit has been declared by the assessee @ 1.5% on the basis of audited books of account, therefore the profit rate of 1.5% be applied as against the profit rate of 8%. The appellant has explained that he is a small trader and manually breaks the shell of almonds and clean and sold them physically on door to door basis only during the festive period of Diwali and during the year the sale could not pick up due to heavy rains and flood in the northern region. Considering these facts and the guidelines of the FSSAI, the sale was made at low margin within the specified period of 6 months.*

*6.3. I have duly considered the written submissions and explanation given during appellate proceedings by the appellant and the assessment order passed by the AO. On perusal of impugned assessment order, it is evident that AO has applied the profit rate of 8% on the purchases which were held to be suppressed to the extent of Rs.7,80,86,998/- arid amount of Rs.62,46,959/- (8% of 7,80,86,998/-) was treated profit on the above purchases. The above rate of profit has been applied only on the basis on assessment order passed for the AY 2014-15 wherein the such profit rate was applied.*

6.4 Though it is a fact that appellant had declared the profit during the year under consideration on the basis of audited accounts but the veracity, correctness and completeness of the audited books of account cannot be held to be reliable as substantial amount of purchases and sales have not been incorporated therein, as discussed above. It is an undisputed fact that had the AIR detail with regard to purchases made by the appellant of Rs.11,10,63,434/- were not available with the AO, the purchases to the extent of Rs.7,80,86,998/- would have remained out of tax net including the profit embedded therein, which has been sold by the appellant out of the books of account. Therefore, I am of the considered view that book result declared by the appellant is not acceptable and provisions of section 145(3) are clearly applicable in the instant case Accordingly, the submissions of the appellant that the profit margin of 1.5% be adopted for estimating the profit on the purchases which were not routed through the books of account are not acceptable. During the entire appellate proceedings, appellant also failed to explain the source of the investment made towards purchases made outside the books of account.

6.5 It is imperative to mention here that on perusal of statement of bank account (Dhanlaxmi bank A/c No. 019205300004100), a copy of which has been provided during appellate proceedings, it revealed that payments towards import bills have been cleared through the above bank a/c and prior to making payment there are cash deposits, the source of which remained un-explained. In spite of having sufficient time allowed to the appellant, he failed to substantiate his claim with corroborative evidence that he sold almonds on high sea basis as requisite details i.e. name and address of the purchaser, PAN and confirmation of the transaction have not been filed to establish his claim of sale on high sea basis. Simple ascertain of fact without evidence cannot replace/controvert the facts on record that assessee made purchases and sale of almonds and substantial part of it has been kept outside the books of account and when the fact came to light on having received AIR in respect of import duty paid, appellant hatched a story to justify the above transaction on high sea basis, which remained unsubstantiated. As is held in innumerable judicial pronouncements that onus is on the assessee to establish his version with corroborative evidence and in the absence of any such evidence, AO is empowered to reject the claim of the assessee.

6.6 In view of the above facts of the case, I am of the considered view that no interference is called for to the addition made by the AO by applying the profit rate of 8% on the total purchases made out of the books of account of Rs.7,80,86,998/- as the source of these purchases remained un-explained

*and the profit earned thereon also remained unexplained and out of the books of account. While upholding the addition, due care has been taken with regard to unexplained investment towards purchases made by the appellant for which no separate addition has been made on this account. It is worthwhile to mention here that during the entire appellate proceedings, appellant failed to substantiate his claim of high sea sale and no evidence has been brought on record to controvert the finding of the AO. Hence, the ground of appeal taken by the appellant is dismissed.”*

10. Thus, the learned CIT(Appeals) sustained the impugned addition. There is no dispute with regard to the fact that the AO made addition to the extent of 8%, however accepted the rate of profit relating to sales recorded into the audit reports. The only explanation offered before lower authority by the Assessee was that owing to heavy rains the sales were made at high seas. This explanation was rejected for want of supporting evidences. Undisputedly, the addition has been purely made by applying estimated profit rate. Albeit learned CIT(Appeals) made certain observation regarding source of investment of purchases but did not opt for enhancing the income. It can safely be inferred that the Revenue has no objection so far source of investment made in purchases. Hence, purchases are accepted as explained. Only dispute is with regard to sales made by such purchases and profit element embedded into such sales.

11. The contention of the Assessee is that sales were made at high seas at lower rates out of business exigencies. It is noteworthy that this explanation was rejected simplicitor on the ground that no supporting evidence was filed by the Assessee. In



our considered view lower authorities ought to have verified the correctness of claim of the Assessee, looking to the totality of facts of present case, adopting the profit rate as per last year in respect of undisclosed sales, when the sales are stated to be made under duress. However, some leakage of revenue cannot be ruled out. Keeping the fact in view that the AO himself has accepted profit @ 1.52% for the sales recorded in the books of account, we hereby direct the AO to adopt profit @ 3.5% on the suppressed sales. The grounds of appeal are partly allowed.

12. In the result, appeal of the Assessee is partly allowed.

Order pronounced in open court on 30<sup>th</sup> June, 2023.

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**  
**\*MP\***

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**