IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E'COURT, ATKOLKATA

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.235/Gau/2019

(निर्धारणवर्ष / Assessment Year:2014-15)

Sayqul Islam **Islam Hardware Stores,** **Islamnagar, Ahmedpur No.2,** **Bangalmore, Assam-787054**	**Vs.**	**ITO, Ward-North lakhimpur**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAWPI 8015 P**		
(Appellant)	**..**	**(Respondent)**

Appellant by : Shri Anil Kumar Agarwal, FCA

Respondent by :Shri T. Hunar, JCIT

सुनवाईकीतारीख/ **Date of Hearing** : **19/06/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **31/07/2020**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)—1, Guwahati, in appeal no. 374494271250118/343, dated 07.02.2019,which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) /147 of the Income Tax Act, 1961 (in short the 'Act') dated 27/12/2017.

2. The grounds of appeal raised by the assessee are as follows:

> *1. For that the ld. CIT(A) was not justified in partially upholding the addition made by the Assessing Officer on estimated basis merely on the ground that the appellant assessee had failed to comply with requirements of law relating to audit and filing of returns, ignoring the fact that separate penalty was prescribed in the Act for the said failures.*
>
> *2. For that the ld. CIT(A) was not justified in travelling beyond the assessment year under appeal and in issuing directions to the Assessing Officer to disturb the assessments relating to other years.*
>
> *3. For that the appellant urges leave to raise any further / additional ground before or at the time of hearing of the appeal.*

3. Brief facts qua the issue are that on examination of the return of income and the other documents submitted by assessee, it was noticed by assessing officer that the assessee has declared net profit to the tune of Rs.2,21,539/- on his turnover shown at Rs. 2,23,59,967/-. On percentage terms, the net profit comes to 0.99% of the turnover shown at Rs. 2,23,59,967/-. The information was provided by the assessee in his return of income reflecting maintenance of books of accounts, but not audited as required under the provisions of Section 44AB of the Act. As per provisions of section 44AD of the Act, in a case where books of accounts have not been maintained by the assessee and the turnover is less than Rupees one crore, the net profit can be shown at a minimum of 8% and the assessee is not required to maintain regular books of accounts. However, in a situation where the net profit is to be shown at less than 8% of turnover / sales, in that case the assessee is required to maintain books of accounts under section 44AA(2) of the Act, and also get the same audited by a Chartered Accountant as per provision of Section 44AB of the Act.

4.As assessing officer noticed that the assessee shown turnover at Rs. 2,23,59,967/- and net profit at Rs. 2,21,539/- and in terms of percentage the net profit ratio comes @ 0.99%, which is less than 8% as required by the provisions of section 44AD of the Act. Therefore, the assessing officer was of the view that as per provisions of section 44ADof the Act, an assessee may claim lower profits and gains than the profits and gains specified in sub-section (1) of section 44AD of the Act, provided the assessee keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA of the Act and gets his accounts audited and furnishes a report of such audit as required u/s 44AB of the Act. Since, the turnover of the assessee was more than the prescribed limit for audit of one crore but not audited and assessee estimated the net profit lower than 8%, therefore, the assessee's estimation of income on the turnover was not accepted by assessing officer and assessee was asked to show cause that why the net profit shall not be estimated @ 8% on turnover declared by the assessee.

5. In response, the assessee submitted that the net profit percentage is very low in his business and requested the assessing officer to take the net profit percentage @ 3% on the turnover.

6. However, the assessing officer rejected the contention of the assessee and held that since the turnover of business of the assessee was more than one crore and the assessee had failed to get the accounts audited by a Chartered Accountant as required by the provisions of section 44AB of the Act, therefore, the assessee's estimation of income lower than 8% was not acceptable. Hence, in the absence of audited accounts, the net profit of the assessee was therefore estimated by assessing officer @ 8%, which came to Rs17,88,797/- (Rs. 2,23,59,967 x 8%). Since the assessee had already declared the net profit at Rs. 2,21,539/- therefore, the balance sum of Rs. 15,67,258/- (Rs. 17,88,797 minus Rs. 2,21,539) was added to the total income of the assessee as suppressed income from business.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has reduced the estimated profit on turnover from 8% to 5% observing the following:

> *"Respectfully relying on the ratio of the above judgments and noting that the Ld AO had not specifically identified any specific defects in thepurported evidences and also taking note of the fact that the Ld AO has not held that the expenses so claimed by the Appellant were not incurred by the Appellant for the purpose of its business, I find some merit in thecontention of the appellant. However, it is also correct that despite such huge turnover and huge cash deposits in his bank accounts, the appellant did not care to get his accounts audited under Section 44AB of the Act. It is also noteworthy that the appellant did file his return of income only after a notice under Section 148 of the Act was issued to him. Thus, it is clear that the appellant is having a non-compliant and blatant attitude towards the revenue. Therefore, while the case of the appellant merits some relief, at the same time entire relief cannot be permitted to the appellant. In my opinion the ends of justice would be met, if a net profit rate of 5% is adopted since the same would take care of the inconsistencies which the Tax audit report could have provided such as details of unsecured loans, compliance with TDS provisions, details of payments of tax, cess, duty, fees, compliance with provisions of section 40A(3) of the Act, maintenance of inventory records etc. The appellant would accordingly get a relief of 3% of the net profit rate. Thus, out of the total addition of Rs.15,67,258/-, an addition of Rs.896459/- (i.e. 5% of Rs.2,23,59,967/- less Rs.2,21,539/-) is hereby sustained and the balance addition of Rs.6,70,799/- (ie 3% of Rs.2,23,59,967/-) is hereby deleted. The above grounds of appeals are, accordingly, partly allowed."*

8. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

9. The ld. Counsel for the assessee has reiterated the submission made before the ld. CIT(A),and on the other hand, ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

10. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. We note that the Assessing

Officer has applied the provisions of section 44AD of the Act and completed the assessment by making estimation of income at the rate of 8% of turnover declared by the assessee. The Assessing Officer has made the presumption that the provisions of section 44AD of the Act is applicable to the assessee's case. We note that the assessee is an individual carrying on business of trading in hardware goods. He carries on business from a shop at Bangalmora in the name of Islam Hardware Store. He filed return of income for A.Y. 2014-15 in response to notice u/s 148 of the Act, declaring income of Rs. 2,54,970/-. The ld. Assessing Officer assessed the income at Rs. 17,88,797/- by applying the provisions of section 44AD of the Act and estimated business profits @ 8% of assessee`s turnover. On appeal, the ld CIT(A) reduced the estimated profit from @ 8% of turnover to @ 5% of turnover. Now, the assessee is in appeal before us and prays the Bench that estimated profit may be reduced to @2.5% of the turnover.

11. We have examined the facts of the assessee`s case. In fact, during the course of hearing, the Bench asked the ld Counsel to produce comparative chart of profitability statement of the earlier years of assessee`s business, that is, prior to assessment year 2014-15. The ld Counsel submits before the Bench that the assessee does not have books of accounts of earlier years therefore he cannot submit the comparative chart of profitability statement of the earlier years business, that is,prior to assessment year 2014-15. However, ld Counsel informs the Bench that assessee can submit comparative chart of profitability statement for subsequent years, that is, after assessment year 2014-15. The Bench has also asked, ld DR for the Revenue to submit the comparative chart of profitability statement of similar/identical businesses as that of assessee of the earlier years that is, prior to assessment year 2014-15, so that a fair estimate can be made in assessee`s case to deduce the percentage of profit. However, ld DR has expressed his inability to do so.

12. However, before us, ld Counsel submits comparative chart of profitability statement for subsequent assessment years, that is profitability statement from assessment years 2016-17, 2017-18 and 2018-19 wherein the assessee has shown net profit @ 2.64%, 2.65% and 4% respectively. The comparative gross profit chart and net profit chart (for subsequent assessment years) submitted by the assessee is given below:

Comparative Chart of Gross Profit Ratio and Net Profit Ratio

FY	Opening Stock	Purchases	Expense	Sales	Closing Stock	Gross Profit	Other Income	Net Profit	GP Ratio	NP Ratio
2013-14	1,24,510	2,20,24,850	-	2,23,59,967	5,25,620	7,36,227	1,02,500	2,21,539	**3.29%**	0.99%
Unable to provide the same presently since not available online.										
2015-16	43,71,503	1,83,18,634	1,75,256	2,07,98,021	28,65,338	7,97,966	10,91,552	5,49,917	**3.84%**	2.64%
2016-17	28,65,338	1,88,92,405	1,12,061	1,91,94,379	31,57,059	4,81,634	9,69,724	5,08,026	**2.51%**	2.65%
2017-18	31,57,059	1,50,84,085	35,104	1,71,32,223	16,23,554	4,79,529	7,65,994	6,84,541	**2.80%**	4.00%

Notes:
1. Figures of FY 2013-14 are unaudited. Subsequent years' figures are from audited accounts filed with IT Department.
2. Figures of FY 2014-15 are unavailable online. Status of the same could not be ascertained.
3. Audited Profit & Loss Account and Balance Sheets for FY 2015-16, 2016-17 and 2017-18 are annexed.
4. In 2015-16, 2016-17, 17-18 there is substantial amount credited to the Profit & Loss Account under the head "Credit Notes/other income" as may be seen from the annexed Profit & Loss Account which has positively impacted the Net Profit Ratio.

Trading Account for the year Ending 31st March 2016

Particulars	Opening Stock (Amount)	Purchases (Amount)	Expenditure 1	Gross Profit	Total	Sales (Amount)	Closing Stock (Amount)	Total
2nd Sch. 5%	13,25,653.00	31,95,763.00	30,574.15	2,68,198.85	48,20,189.00	33,60,501.00	14,59,688.00	48,20,189.00
5th Sch 14.5%	30,45,850.00	1,51,22,870.82	1,44,681.85	5,29,767.33	1,88,43,170.00	1,74,37,520.00	14,05,650.00	1,88,43,170.00
Total	**43,71,503.00**	**1,83,18,633.82**	**1,75,256.00**	**7,97,966.18**	**2,36,63,359.00**	**2,07,98,021.00**	**28,65,338.00**	**2,36,63,359.00**

The accompanying notes are an integral part of the financial statements.
As per our report of even date
For Baid Ray & Associates
Chartered Accountants
(Registration No. 325204E)

For SAYQUL ISLAM

From the above comparative profit chart of subsequent years, we note that the average profit rate for subsequent assessment years 2016-17, 2017-18 and 2018-19 comes at 3.09% (2.64 +2.65+4.00/ 3). Normally, to estimate the profit of any assessee, the previous years` profit ratios are used and not the subsequent years` profit ratio. However, the subsequent years` profit ratios as submitted by the assessee provide us a bird eye and rough idea that what is the earning trend in the assessee`s business.

13. However, we note that assessing officer had not specifically identified any specific defects in the purported evidences and also taking note of the fact that the assessing officer has not held that the expenses so claimed by the assessee in his

books of accounts were not incurred by the assessee for the purpose of its business. The assessee has produced all books of accounts, vouchers, bills and other documents but the Assessing Officer without pointing out any mistake and error in the bills/vouchers and in the books of accounts made addition @ 8% which was reduced by the ld CIT(A) to5%. It is also admitted fact that assessee`s books of accounts were not rejected by the assessing officer although these were not audited under section 44AB of the Act by a Chartered Accountant. We note that the AO could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses and showing net profit ratio at a very low rate. Therefore, based on the factual position narrated above we find merits in the contention of the Counsel. Therefore, taking into account merits of the assessee`s case, as narrated above, in our opinion the ends of justice would be met, if a net profit rate of 2.50% is adopted. Thus, we direct the assessing officer to estimate the income @ 2.5% of the turnover which comes at Rs.5,58,999/-(2.5% of Rs. 2,23,59,967).

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 31.07.2020

Sd/-	**Sd/-**
(A.T. VARKEY)	**(A.L.SAINI)**
न्यायिकसदस्य / JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 31/07/2020
(*SB, Sr.PS*)

Copy of the order forwarded to:
1. Sayqul Islam
2. ITO, Ward-North Lakhimpur
3. C.I.T(A)-
4. C.I.T.- Guwahati.
5. CIT(DR), GauhatiBench, Guwahati.
6. Guard File.

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By Order

Senior Private Secretary / DDO/ H.O.O
ITAT, Gauhati Bench