

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCHES, NEW DELHI
(CIRCUIT BENCH AT MEERUT)**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4563/Del./2014
(Asstt. Year:2009-10)**

Mohd Tehseen, C/o. Vinod Kumar Goel, 282, Boundary Road, Civil Lines, Meerut, PAN:AFOPT9140D (Appellant)	Vs.	ITO Ward-1(4), Meerut (Respondent)
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Date of hearing	15/12/2015
Date of pronouncement	11/03/2016

Assessee by: Sh. Vinod Kumar Goel, Adv
Revenue by: Sh. Sheodan Singh Bhaddoria, Sr. DR

ORDER

PER PRASHANT MAHARISHI, A. M.

01. This appeal is preferred by the assessee against the order of the CIT(A), Meerut dated 28.03.2014 for the Assessment Year 2009-10 on the following grounds :

- “1. That Ld. A.O. as well as CIT(A) has not provided proper and reasonable opportunity of being heard, Hence, order passed by A.O. as well as CIT(A) is against the principle of natural justice.*
- 2. That Ld. A.O. is in error that the difference of cash deposit in bank relates to the business receipt and applying a gross profit rate @ 15% and making addition of Rs.9,34,155/- is arbitrary, unjust and not according to law and CIT(A) is in error to confirm the same without any basis.*

3. *That Assessing Officer has rejected the books of accounts without pointing any defects in the books of account hence the action of rejecting books of accounts without any reason is against of Law & facts of case.*
 4. *That addition of Rs.9,34,155/- has been made on the basis of estimate & conjecture only, there is no evidence on record to suggest out of books sale estimated at Rs.62,27,700/- hence the addition of Rs.9,34,155/= deserves to be deleted.”*
02. This appeal is preferred by assessee against order of CIT (A) dated 28/03/2014, raising four effective grounds of appeal all related to addition of Rs.9,34,155/- being gross profit determined at the rate of 15% on estimated unaccounted sale of Rs.62,27,700/-.
03. Brief facts of the case are that assessee is an individual earning income from trading of clothes. He filed his return of income on 04/12/2009 showing income of Rs.159972/ -.It was found that assessee has deposited Rs. 9293900/-in his 3 bank accounts, one with Kotak Mahindra bank limited and another 2 accounts with ICICI bank limited. Assessee was asked to explain the reasons and source of this deposit as assessee has disclosed sales of Rs.3066200/- only and against this cash deposit in the bank account is Rs.9293900/-. Assessee explained before assessing officer that assessee was required to show turnover to the banker because a cash credit limit of Rs.15 Lacs was sanctioned and, therefore, to justify the bank limit the turnover was shown. Assessee also stated that on the same day he has deposits and withdrawals in this bank account and therefore credit of that transaction of withdrawal should be given to the assessee. Learned assessing officer noted that assessee has filed his return of income showing net profit at the rate of 6% of the turnover and assessee himself had admitted that he has filed his return of income as per provisions of section 44 AF of the income tax act. Assessee further stated before the assessing officer that he is maintaining proper books of accounts. Therefore, as the amount deposited in cash in about 3 bank accounts was not reflected in the books of the assessee, he rejected the books of

accounts of the assessee. The difference of Rs. 6227700/- is treated as unexplained sales of the assessee and on which AO applied a net profit rate of 15% and made an addition of Rs.9,34,155/-. Against this, assessee preferred appeal before the 1d CIT(A). The 1d CIT(A) confirmed the addition of Rs.9,34,155/-. Against this, assessee is in appeal before us.

04. Learned AR of the assessee submitted before us that that amount deposited in the bank account of the assessee is because of the reason that he was to show turnover as he has taken cash credit limit with the bank. He further submitted that that the assessing officer has not rejected the books of accounts of the assessee. Other argument was that the total amount deposited in the bank has been taken as sales without granting credit for withdrawals. He stated that there is no justification given by the assessing officer for adopting the net profit rate of 15% applied on estimation of unaccounted sales where the assessee's net profit rate shown is 6%. He further submitted that according to section 44AF of the act prescribed rate is 5 %. Therefore, his argument that firstly the addition is wrongly made and secondly the adoption of higher profit rate compared to his own rate is not justified.
05. Against this learned departmental representative relied upon the order of the 1d CIT (A) and assessing officer. He submitted that when the amount is deposited in cash in various bank accounts which are not reflected in the books of accounts of the assessee, books of accounts does not show the correct picture and it is incorrect to say that that the books of accounts have not been rejected by the assessing officer. He referred to the order of the assessing officer and submitted that that the cash deposited in the bank account was not at all reflected and similarly, the withdrawals also were not reflected in the books of the assessee. Therefore credit for withdrawal cannot be granted. He further submitted that higher rate of profit is justified because of the reason that assessee himself had

adopted net profit rate of 6% and all the expenditures have already been debited by the assessee in his books of accounts while calculating the 6% and for the unaccounted sales there cannot be any further expenditure. Therefore, he stated that the rate of 15% adopted by the AO is correct and the CIT (A) has upheld it. Therefore, he submitted that the addition may be confirmed.

06. We have carefully considered the rival contentions. It is undisputed that assessee has shown income at the rate of 6% of net profit on the turnover of Rs.30,66,200/- only whereas an amount of Rs.92,93,900/- is found deposited in various bank accounts. The assessee could not offer any satisfactory explanation about excess deposit of Rs.62,27,700/- compared to its sales. Therefore, we do not find any infirmity in the order of the assessing officer or appellate authority because of the reason that there is a huge difference in sales accounted in the books of the assessee as well as amount deposited in cash in various bank accounts. Therefore, we confirm the action of assessing officer of determining unaccounted sales of Rs.62,27,700/-. However, now the issue arises is whether the assessing officer has rightly adopted the rate of 15% of the net profit on this unaccounted sale against 6% net profit shown by the assessee. From the order of the assessing officer as well as 1st appellate authority, we could not find any reason or any comparable case where the rate of profit is adopted at the rate of 15%. Therefore, according to us, this is an arbitrary rate without any comparable cases. The best comparison is also available of the business of the assessee himself wherein he has shown net profit at the rate of 6%. This 6% rate has not been disturbed by AO. This rate is also higher against the rates provided by provisions of section 44AF of the Income Tax Act, which is 5%. Before us learned departmental representative could not show any reason that why profit should be estimated at the rate of 15% instead of 6%. Therefore, we are of the view that in absence of any comparable cases for adoption at such a high rate,

which is almost 2.5 times of the net profit rate shown by the assessee, is not justified. Therefore, we are of the view that best estimate available is the trading result of the assessee himself. As assessee has disclosed 6 % net profit which is which is accepted by assessing officer, we do not see any reason to adopt any other rate. In the result we direct the assessing officer to adopt net profit rate of 6% on unaccounted sales and restrict the addition to that extent only. Therefore, we reverse the finding of CIT (A) accordingly for adopting the net profit rate of 15% of unaccounted sales.

07. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.03.2016.

-Sd/-

(I.C. SUDHIR)
Judicial Member

-Sd/-

(PRASHANT MAHARISHI)
Accountant Member

Dated:11.03.2016

*ajay kumar keot /-

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT (A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*