

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

I.T.A. No.240, 241, 242, 243, 244, 245 & 246/Viz/2021
Assessment Years: 2011-12 to 2017-18)

Polepalli Srinivasulu Gupta, Anantapur. PAN: AJEPP 2643 K Appellant)	Vs.	DCIT, Circle-1, Guntur. (प्रत्यधी/ Respondent)
Appellant by	:	Sri MV Prasad, CA
Respondent by	:	Sri MN Murthy Naik, CIT-DR
Date of Hearing	:	01/06/2022
Date of Pronouncement	:	28/06/2022

ORDER

PER BENCH :

All the captioned appeals are filed by the assessee against the orders of the Ld. CIT(A)-12, Hyderabad in appeal No.10108, 10111, 10114, 10119, 10124, 10126 & 10141/2018-19, dated 28/10/2021 arising out of the order passed U/s. 143(3) r.w.s 153A and U/s. 250(6) of the Act for the AYS 2011 -12 to 2017-18 respectively.

2. Brief facts of the case are that the assessee is a distributor of soaps and detergents for M/s. Bharathi Soap Works and M/s. Bharathi Consumer Care Products Pvt Ltd. A search and seizure operation U/s. 132 was conducted in the premises of Managing Director of M/s. Bharathi Consumer Care Products Pvt Ltd and consequently the distributors and suppliers were also covered in the search operations on 30/08/2016. Notice was issued U/s. 153A on 20/03/2017 served on the assessee on 27/03/2017. In response, the assessee filed return of income on 11/4/2017 admitting a total income of Rs. 2,06,110/- as admitted in the original return of income U/s. 139(1) of the Act. Notices U/s. 143(2) and 142(1) were issued and served on the assessee. In response, the assessee's AR filed information and explanations called for by the AO. The Ld. AO considered the seized material during the search operation and also the deposition of the assessee U/s. 131(1A) wherein the assessee has admitted unaccounted sales of Rs. 31,64,40,122/- as per the details given below:

FY	Turnover as per Annexures (in Rs.)
2009-10	23,19,720
2010-11	1,56,60,108
2011-12	7,90,99,283
2012-13	5,44,88,174

2013-14	5,89,65,250
2014-15	6,15,67,135
2015-16	3,86,89,352
2016-17	56,51,100
Total	31,64,40,122

3. The assessee in the earlier prior to search, has filed his Return of Income (ROI) admitting an average net profit at 8%. Further, the assessee, in response to question No.10 of the deposition, has also admitted net profit at 8% on the unaccounted turnover, aggregating to Rs. 2,53,15,210/- for the AY 2011-12 to 2017-18. The Ld. AO has not considered either the net profit as adopted by the assessee in the deposition U/s. 131(1A) or as per the ROI filed by the assessee for previous years. However, while framing the assessment, the Ld. AO adopted the gross margin of the assessee as per the P & L Account filed by the assessee while filing ROI. Accordingly, he made additions to the total income as extracted herein below for the respective AYs.

Sl No.	AY	Additions (in Rs.)
1.	2011-12	24,86,825
2	2012-13	1,04,17,376
3	2013-14	95,51,777
4	2014-15	92,81,130
5	2015-16	77,88,243
6	2016-17	16,08,116

4. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals)-12, (Ld.CIT(A)), Hyderabad. The Ld. CIT(A) confirmed the order of the Ld. AO and passed ex-parte order as the assessee did not appear in spite of several opportunities provided to the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is appeal before us.

5. The common issue raised by the assessee for the AY 2011-12 to 2017-18 is with respect to determination of profit at gross margin on unaccounted turnover of Rs. Rs. 31,64,40,122/-. With respect to this common issue the Ld. AR argued that the assessee is a distributor and derives margin of 2 to 3% only on the sales made. The Ld. AR also submitted that the Assessing Officer has not even considered the 8% profit as admitted by the assessee during the search operations and instead has adopted an average rate of 15% which is the gross margin of the assessee, on the unaccounted turnover. The Ld. AR pleaded that the assessee is regularly filing his return of income and has disclosed net profit of 8% on the turnover.

Per contra, the Ld. DR argued that the assessee has not provided any details with respect to purchase and expenses incurred for effecting unaccounted sales of Rs. 31,64,40,122/-.

The Ld. DR supported the order of the Ld. AO and pleaded that the AO has rightly added back considering the gross margin as the profit of the assessee for the respective assessment years. The Ld. DR also argued that since all the administrative expenses have been accounted for in the P & L Account filed by the assessee while filing return of income no other additional expenditure would have been incurred by the assessee for effecting this unaccounted sales turnover and hence he pleaded that the order of the AO be upheld.

6. We have heard both the sides and perused the material available on record and the orders of the Authorities below. We find from the submissions made by the Ld. AR with respect to the ROI filed by the assessee for the AY 2011-12 to 2015-16, the assessee has consistently disclosed the net profit at the rate of 8% on the turnover by the assessee. The contention of the Ld. AR that adopting the gross margin without considering the expenditure in effecting the unaccounted turnover deserves consideration. We also note from the depositions made by the assessee during the search and seizure operations, the assessee has admitted that he derives 8% net profit on the turnover admitted and accordingly the same 8% net profit shall be adopted

for the unaccounted turnover also. The deposition by the assessee during the time of search operation on the Question No.10 is reproduced below:

“Q.No.10: On verification of your return of income for the AY 2015-16, you have admitted net profit @ 8% on your turnover. Similarly, please tell us why (sic) your profit on unaccounted sales as stated above should not be taken as 8% ie., Rs. 2,53,15,210/- over and above the regular income for FY 2009-10 to 2016-17.

Ans: I have no option to admit the same as unaccounted income.”

7. The findings of the AO that the profit ratio based on which the assessee admitted the income at the time of search as it is without basis could not be accepted due to the fact that even before the search and seizure operations the assessee has consistently declared net profit @ 8% which is evident from the returns filed by the assessee for the respective assessment years. The Ld. AO has also while accepting the unaccounted turnover should have given effect to the unaccounted purchases and also unaccounted expenditures incurred for effecting the unaccounted turnover. The Ld. AO also erred in adopting the gross margin at an average rate around 15% without considering the fact that the assessee has declared a net profit of 8% on the accounted turnover. The details of gross margin adopted by the AO for the respective AY is given below:

AY	GP%
2011-12	15.88
2012-13	13.17
2013-14	17.53
2014-15	15.73
2015-16	12.65
Average Rate	15%

The net profit ratio of 8% as declared by the assessee in various AYs while filing the return of income for the respective AYs should have been adopted by the AO while making additions to the total income of the assessee. The Assessing Officer is therefore directed to adopt a net profit ratio of 8% as discussed in para 3.1(a) of the AO's order. It is ordered accordingly.

ITA No.244/Viz/2022 (AY-2015-16)

8. The assessee in his written submissions pleaded before us that the benefit of telescoping should be given as per the profit admitted and taxed for the earlier AYs. The Ld. AR pleaded that the Ld. AO has considered the Net Profit of 2.5% on the turnover which is not in accordance with law. Per contra, the Ld. DR argued that since the assessee pleaded that the net profit is at the range of 2.5% to 3%, the AO has rightly considered 2.5% for the purpose of telescoping and added the balance unexplained

investment U/s. 69 of the Act. The Ld. DR supported the order of the Ld. AO.

9. We have heard both the sides and perused the material available on record and the written submissions made by the assessee and the orders of the authorities below. We find from the orders of the Ld. AO that the AO has assessed the unaccounted turnover at an average rate of 15% through the gross margin made by the assessee in the respective AYs. The Ld. AO has not considered the net profit declared by the assessee in the earlier AYs @ 8%. The Ld. AO has once again inconsistently for the purpose of telescoping has assessed the income @ 2.5% of the turnover. We find that the Ld. AO in his order at para 3.3 has clearly stated that the assessee is qualifying for telescoping benefit. However, the Ld. AO erred in adopting differential rates for the assessment of income, one for the purposes of taxing the income and another for the telescoping benefit. There is no dispute on the conclusion of the fact by AO that the assessee is entitled for telescoping benefit, but the AO erred in adopting differential rates while allowing telescoping benefit to the assessee. We therefore direct the AO to adopt a consistent rate of 8% (net profit) on the unaccounted

turnover and consequently the same should be considered for the telescoping benefit to the assessee.

ITA No. 245/Viz/2021 (AY: 2016-17)

10. The Ld. AR argued that once again the Ld. AO has adopted an average 3 years profit of 9.75% on the unaccounted turnover for the relevant AY. The Ld. AR pleaded that the Assessing Officer has computed the average net profit for 2013-14, 2014-15 and 2015-16 without considering the fact that the assessee is declaring a net profit @ 8% in the earlier years. The Ld. AR therefore pleaded that the same 8% should be considered for adding net profit to the total income for the next assessment year. Per contra, the Ld. DR supported the order of the Ld. AO.

11. We have heard the rival contentions and perused the material available on record and the orders of the Authorities below. We find that the AO once again erred in adopting a differential rate for the relevant AY. We do not find any basis adopted by the AO in computing the average net profit of three years ie., 2013-14 to 2015-16. The AO once computed the gross margin @ 15% on the unaccounted turnover for the AYs 2011 -12 to 2015-16 and for the present AY has computed the average net

profit of three years ie., 2013-14 to 2015-16. In order to follow the consistency in the net profit ratio, we direct the AO to adopt the rate of 8% on the total turnover and accordingly income may be assessed as such.

ITA No. 246/Viz/2021 (AY 2017-18)

12. The Ld. AR argued that once again the Ld. AO has adopted an average 3 years profit of 9.75% on the unaccounted turnover for the relevant AY. The Ld. AR pleaded that the Assessing Officer has computed the average net profit for 2013 -14, 2014-15 and 2015-16 without considering the fact that the assessee is declaring a net profit @ 8% in the earlier years. The Ld. AR therefore pleaded that the same 8% should be considered for adding net profit to the total income for the next assessment year. Per contra, the Ld. DR supported the order of the Ld. AO.

13. We have heard the rival contentions and perused the material available on record and the orders of the Authorities below. We find that the AO once again erred in adopting a differential rate for the relevant AY. We do not find any basis adopted by the AO in computing the average net profit of three years ie., 2013-14 to 2015-16. The AO once computed the gross

margin @ 15% on the unaccounted turnover for the AYs 2011 -12 to 2015-16 and for the present AY has computed the average net profit of three years ie., 2013-14 to 2015-16. In order to follow the consistency in the net profit ratio, we direct the AO to adopt the rate of 8% on the total turnover and accordingly income may be assessed as such.

14. With respect to the additions made on account of cash deposits made during the demonetization period, the Ld. AR in his written submissions submitted that these cash deposits are made out of the cash sales. The Ld. AR also pleaded that the cash deposits are not on account of unexplained money and therefore section 69A of the cannot be invoked. The Ld. AR also submitted that these cash sales are already accounted in the books of accounts and the audited financial statements were filed while filing the return of income. The Ld. AR in his written submissions demonstrated that the cash deposits made during the current year and also during the previous year into the bank. The relevant table is extracted below:

Cash deposits in the Axis Bank A/c No. 332010200000383			
FY 2016-17	Amount deposited	FY 2015-16	Amount deposited
April -16	37,65,000	April -15	32,90,000

May-16	33,80,000	May-15	23,70,000
June-16	46,90,000	June-15	29,35,000
July-16	36,31,400	July-15	27,90,000
August-16	38,40,000	August-15	33,35,000
Sept-16	28,70,000	Sept-15	44,95,000
Oct-16	39,70,000	Oct-15	26,45,000
Nov-16	34,44,000	Nov-15	36,50,000
Dec-16	42,88,000	Dec-15	43,00,000
Jan-17	47,90,000	Jan-16	38,00,000
Feb-17	47,45,000	Feb-16	40,00,000
Mar-17	37,50,000	Mar-16	39,75,000
Total	4,71,63,4000	Total	4,16,45,000

15. From above table, the Ld. AR pleaded that the assessee is consistently depositing amounts arising out of the cash sales and hence it is not unaccounted money. Per contra, the Ld. DR relied on the orders of the Authorities below.

16. We have heard both the sides and perused the material available on record and also the orders of the Authorities below. Respectfully following the judicial pronouncement in the case of Principal Commissioner of Income Tax vs. Agson Global (P) Ltd., reported in [2014] 134 taxmann.com 256 (Delhi), we note that the cash sales made by the assessee deposited in the bank account are in accordance with law and hence the addition made by the AO is deleted. From the submissions made by Ld AR, we find that the assessee is consistently depositing the sale proceeds realized by way of cash. We also refer to the Specified Bank

Notes (Cessation of Liabilities Act, 2017) wherein section 5 of the Act clearly states that *On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note.* Section 2(1)(a) of the Specified Bank Notes (Cessation of Liabilities Act, 2017) also refers “appointed day” means the 31st Day of December, 2016. In this context, we find that the sales made by the assessee and the specified notes deposited by the assessee into the account are legally valid and hence no addition is warranted on these deposits.

17. In the result, all the appeals of the assessee are partly allowed.

Pronounced in the open Court on the 28th June, 2022.

Sd/-

REDDY)
JUDICIAL MEMBER

28.06.2022

Sd/-

(DUVVURU RL
(S.BALAKRISHNAN)
ACCOUNTANT MEMBER Dated :

आदेश की प्रतिलिपि आर्किव/ Copy of the order forwarded to:-

1. नन्धनरती/ The Assessee - Polepalli Srinivasulu Gupta, D.No.60-7- 13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh.
2. रधजस्व/The Revenue - Deputy Commissioner of Income Tax, Circle- 1, Guntur.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-12, Hyderabad.
5. नन्धनीय प्रतिलिपि, आयकर अपीलीय अनधिकरण, नन्धनपट्टण/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाइल/ Guard file

आदेशनुसधर / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam