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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 332/2022& CM APPL. 40706/2022

SH NARENDER KUMAR ANAND Appellant

Through: Mr. S. Krishnan, Mr. Amandeep
Mehta & Mr. Devender Singh Pal,
Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agrawal &
Mr. Parth Semwal, Jr. Standing
Counsels.% Date of Decision: 16thSeptember, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J (ORAL):****CM APPL. 40706/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

ITA 332/2022

1. The present Income Tax Appeal has been filed seeking a direction for setting aside the order dated 1st October, 2021, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 7376/Del/2017 for the Assessment Year ('AY') 2013-14.

2. The appellant is aggrieved by the order of the ITAT upholding the decision of the Commissioner of Income Tax(Appeals) ['CIT(A)'] and the Assessing Officer ('AO') rejecting the books of accounts of the Assessee



and assessing the gross profit of the Assessee for the relevant assessment year at the rate of 2% of the gross sales.

3. The learned counsel for the appellant contends that the ITAT failed to appreciate that the AO had failed to take into account the component of Central Sales Tax ('CST') while determining the rate of the gross profit. He states that the payment of CST is duly reflected on the invoices and if the said CST is taken into account, the rate of gross profit at 2% is *ex-facie* erroneous. He states that the taxes form part of the cost of the goods sold and therefore, should have been considered while estimating the trade margin of the Assessee. He states that since, admittedly there was no comparable case of a wholesale trader relied upon by the AO and the rate of gross profit has been determined by the AO with reference to the trade margins of manufacturers, which has led to an erroneous determination.

4. He further states that the ITAT erred in upholding the AO's order rejecting the accounts of the Assessee when admittedly all purchases and sales transactions were carried out through banking channels. He states that ITAT is the final fact finding authority and the ITAT failed to appreciate the error made by the AO in determination of the rate of gross profit which has led to taxation of an amount which is manifold the returned income.

5. Mr. Vipul Agrawal, learned counsel for the Revenue is present on advance notice. He states that, in this matter, there are concurrent findings of fact by the appellate authorities, upholding the findings of the AO and therefore, no interference is warranted in this appeal. He further states that the Assessee in this appeal is seeking re-appreciation of evidence which may not be entertained by this Court.



6. We have heard the learned counsel for the parties and perused the paper book. The order records that the case was selected for scrutiny through Computer Aided Scrutiny Selection (CASS) with reasons of low net profit from large gross receipts. On 7th September, 2013, the Assessee filed his return declaring a total income of Rs. 6,27,480/- and in his balance sheet disclosed purchases of Rs. 80,30,04,497/-, sales amounting to Rs. 77,01,13,308/- and a gross profit of Rs. 9,88,679/- i.e., 0.13% of the purchases. The AO noted that the total expenses were a meagre sum of Rs. 3,57,159/-. The AO noted that the expenses claimed for making such huge sales and purchases were nominal. The AO during the course of the assessment proceedings issued notice to the sundry debtors of the Assessee. Notices were sent to twenty (20) sundry debtors and nineteen (19) of the parties did not respond and therefore, no confirmation was received by the AO from the sundry debtors. The only sundry debtor who did respond to the AO categorically denied any transaction with the Assessee and completely disassociated itself from the transaction with the Assessee. In view of the said facts, the AO issued a notice to the Assessee to show cause why his books of accounts should not be rejected as per the provisions of the Section 145(3) of the Income Tax Act, 1961, (the 'Act'). No reply was filed by the Assessee to the aforesaid notice. The AO, therefore, considered it proper to reject the books of accounts of the Assessee and proceeded to assess the gross profit for the relevant AY. The AO after perusing the invoices of sales and purchases filed before it by the Assessee, determined that the Assessee had made gross profit in the range of 2.0% to 3.0% on various products. The AO determined the gross profit of the Assessee at the lower rate of 2% of the gross sales.



7. The Assessee aggrieved by the assessment order passed by the AO, filed an appeal before the CIT(A), which after perusing the record, concurred with the findings of the AO and held that the sales of the Assessee could not be verified in view of the non-confirmation from the sundry debtors. The CIT(A) upheld the rate of gross profit determined by the AO and further observed that the Assessee himself had not furnished any comparative information of the rate of gross profit earned by a comparable wholesaler.

Aggrieved by the order of the CIT(A), an appeal was preferred by the Assessee before the ITAT. In the appeal filed before the ITAT as well, the ITAT has concurred with the findings of the AO and the CIT(A) and upheld the rate of gross profit at 2% on the gross sales declared by the Assessee. The ITAT rejected the submission of the Assessee for deduction of the statutory taxes i.e., CST by holding that while estimating the gross profit, all expenditure has been accounted for and this includes the expenditure towards taxes.

8. We do not find any perversity in the concurrent findings of the CIT(A) and ITAT. The ITAT is the final fact-finding authority, accordingly no substantial questions of law arise for consideration in the present appeal and accordingly, the same is dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 16, 2022/msh