

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA Nos.399 to 401/Bang/2020
Assessment Year: 2010-11 to 2012-13

Sri Atul Dinesh Seth No.10.2, Ibrahim Complex S.P. Road Bengaluru-560002 PAN NO : AFGPS6398E	Vs.	ITO Ward-2(3)(3) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar S.V., A.R.
Respondent by	:	Shri Sunil Kumar Agarwal, D.R.

Date of Hearing	:	04.03.2021
Date of Pronouncement	:	08.03.2021

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are directed against different orders of CIT(A) for the above assessment years. The grounds in these appeals are common and there is only change in the figures in respect of different assessment years, which are as follows:

- 1. The order of the learned CIT(A) in so far as it is against the Appellant is opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*
- 2. The Appellant denies himself to be liable to a assessed to an income of Rs. 53,75,793/-under the facts and circumstances of the case.*

Legal Grounds:

3. *The learned CIT(A) failed to appreciate that the mandatory conditions to assume jurisdiction under section 148 does not exist and consequently the assessment made is bad in law on the facts and circumstances of the case.*
4. *The learned CIT(A) failed to appreciate that the reasons recorded by the learned assessing officer amounts to reason to suspect and do not amount to reason to believe on the facts and circumstances of the case.*

Grounds on Merits:

5. *The learned CIT(A) is not justified in law and on facts in confirming the estimation of the business profit of the appellant at 10% on the total turnover of Rs. 2,05,45,006/- which worked out to Rs.20,54,500/- as business income under the facts and circumstances of the case.*
6. *Without prejudice the estimation of the profit at 10% on the total turnover of Rs. 2,05,45,006/- is highly excessive and the same requires to be reduced substantially. The authorities below failed to appreciate the fact that the business of the appellant and like cannot achieve a net profit of about 10% and the same requires to be reduced substantially, as per the industry average, under the facts and circumstances of the case.*
7. *The authorities below failed to appreciate the fact that once the income is estimated no other addition shall be made and further the authorities below ought to have telescoped other additions with that of the income from business estimated under the facts and circumstances of the case.*
8. *The learned CIT(A) is not justified in confirming the addition of Rs. 16,18,606/- by invoking the provisions of section 69C of the Act treating the payment made through the credit cards as unexplained expenditure under the facts and circumstances of the case.*
9. *The learned CIT(A) is not justified in law and in facts in confirming the addition of Rs. 13,42,500/- as unexplained cash credits under the facts and circumstances of the case.*
10. *The appellant denies the liability to pay interest under section 234A and 234B of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
11. *The Appellant craves leave to add, alter, delete, substitute or modify any of the grounds urged above.*

12. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

2. The registry noted the delay in filing these appeals. The first appeal order received by the assessee in these cases are dated 12.2.2020. Appeals are filed by assessee in all these assessment years on 18.5.2020. In this case, the assessee is required to file the appeal within 60 days from the date of receipt of order of CIT(A). However, these are filed on 18.5.2020. Thus, registry has noted the delay of 36 days. However, we find that in view of suspension of limitation Act by Hon'ble Supreme Court vide its judgement suo moto WP (Civil) No.3/2020 dated 23.3.2020 due to Covid-19 Pandemic, it cannot be said that there is a delay in filing these appeals. Accordingly, we observe that there is no delay in filing these appeals.

3. The first ground in these appeals is with regard to the assessee challenging the reopening of assessment u/s 147 r.w.s. 148 of the Income-tax Act,1961 ['the Act' for short]. This ground was not pressed before us. Accordingly, this ground in all these appeals are dismissed as not pressed.

4. The next ground in this appeal is with regard to the estimation of income @ 10% of the total turnover. The details of the additions of A.O. is as follows:

<i>Particulars</i>	<i>AY 2010-11</i>	<i>AY 2011-12</i>	<i>AY 2012-13</i>
<i>Gross Turnover</i>	<i>1,98,90,176</i>	<i>68,20,153</i>	<i>1,01,43,265</i>
<i>Turnover adopted by the A.O.</i>	<i>2,05,45,006</i>	<i>85,70,401</i>	<i>1,01,43,265</i>
<i>Estimation on sales by AO @ 10%</i>	<i>20,54,500</i>	<i>8,57,040</i>	<i>10,14,326</i>
<i>Income computed by the appellant</i>	<i>8,11,380</i>	<i>5,40,083</i>	<i>7,62,168</i>
<i>% of Turnover as per computation</i>	<i>4.08</i>	<i>7.91</i>	<i>7.51</i>
<i>Additions in appeal</i>	<i>12,43,120</i>	<i>3,16,957</i>	<i>2,52,158</i>

In these assessment years, the income of the assessee estimated at 10% of gross turnover. The contention of the Ld. A.R. is that it is too high and it should be restricted to the income offered by the assessee and the percentage of income offered by the assessee is more the trade norms in this kind of assessee.

5. Ld. D.R. submitted that the assessee's argument is not based on any documents or evidence to support the same. Accordingly, it was submitted that assessee's books of accounts is not verifiable as such, A.O. made a reasonable estimate of 10% of the total turnover of the assessee.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. In this case, it was noticed that the assessee is not maintaining books of accounts, as such, the income of the assessee was estimated by A.O. by invoking the provisions of section 44AF of the Act @ 10% of the total turnover as income of the assessee as follows:

<i>Particulars</i>	<i>AY 2010-11</i>	<i>AY 2011-12</i>	<i>AY 2012-13</i>
<i>Gross Turnover</i>	<i>2,05,45,006</i>	<i>85,70,401</i>	<i>1,01,43,265</i>
<i>Rate of profit adopted by assessee</i>	<i>4.08</i>	<i>7.91</i>	<i>7.51</i>
<i>Rate of profit adopted by A.O.</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<i>Rate of profit to be adopted</i>	<i>8%</i>	<i>8%</i>	<i>8%</i>

The assessee has adopted the net profit rate at 4.08% to 7.91% from one year to another. There is high volatility in adopting the rate of profit by the assessee. In our opinion, to meet the ends of justice, it is appropriate to estimate the income of the assessee at 8% of the gross turnover instead of 10% adopted by the A.O.

7. Next ground in this appeal is with regard to the addition made in this assessment year u/s 69C/68 of the Act as follows:

<i>Sl.No.</i>	<i>Assessment year</i>	<i>Addition u/s 69C of the Act (Rs.)</i>	<i>Addition u/s 68 of the Act (Rs.)</i>
1	2010-11	16,18,606/-	13,42,500/-
2	2011-12	7,99,339/-	4,77,243/-
3	2012-13	8,02,469/-	4,00,053/-

8. The contention of the A.R. is that once the income of the assessee estimated by applying the section 44AF of the Act, there cannot be any further addition for any lapse in the books of accounts. In these assessment years, except AY 2011-12, the turnover of the assessee is more than Rs.1 crore strictly speaking provision of section 44AF of the Act cannot be applied. Since the assessee is not maintaining the books of accounts, the A.O. estimated the income of the assessee by taking the clue from the section 44AF of the Act. As such in our opinion the assessee cannot plead that once the income estimated no other addition could be made either u/s 68/69C of the Act or by any other provisions of the Act. There is no rule that when an amount is credited in the bank account, it must be taken as receipt from the business. The amount deposited into bank account is received from business or income or from other sources depends on the evidence and explanation furnished by the assessee. If the deposits are found in the bank account of the assessee and the explanation as to the nature and source of the amount is rejected by the A.O., in such occasion, the A.O. is entitled to treat the deposits as income from other sources and not as income from business. It is merely because the assessee is running a business in which event certain unexplained deposits, it is not necessary to show that such deposits represent the suppressed business receipts and there would be no error of law in treating the unexplained deposit income of the assessee from other sources. Unless there are strong reasons for

Page 6 of 7

giving unexplained deposits with known source of income of the assessee, there will be no alternative to treat the same as “income from other sources”. In the present case, the plea of the assessee that payment towards various cards like Citi Bank Card, ICICI Card, American Express card out of earlier withdrawals used for the business purpose and same was redeposited towards credit card payments and there should be due credit to be given. In our opinion, where the credit card withdrawals on earlier occasion from various credit cards was used for business purpose are to be established by the assessee by filing necessary evidence and establishing that assessee has used the credit card withdrawals for business purpose and thereafter it has withdrawn the money from the business to clear credit card dues. Accordingly, we remit this issue for the purpose of establishing the nexus between credit card withdrawals and by using it for business purposes and repay the card dues out of business receipts.

9. Further, Ld. Counsel for the assessee relied on the judgement of Hon’ble Karnataka High Court in the case of Delux Roadlines Pvt. Ltd. in ITA No.213/Bang/2014 dated 14.10.2014 for the proposition that without any reasons, the assessing authority cannot estimate the profit of the assessee without taking into account the earlier year return of income. This proposition cannot be applied to the present case since in the case before Hon’ble High Court, the assessee maintained books of accounts and were audited u/s 44AB of the Act in each year and the assessing authority as well as appellate authority do not dispute total turnover furnished by the assessee but in the present case, the A.O. not accepted the turnover declared with assessee and he considered the turnover on the basis of VAT return, which is evident from the table reproduced in para 6 of this order. Accordingly, we are not considered the above judgement in the case

Page 7 of 7

of Delux Roadlines Pvt. Ltd. (supra). Further, assessee's counsel relied on the judgement of Indwell Constructions 232 ITR 776 for the proposition that where the books of accounts have been rejected, revenue cannot rely on the same books for additions of an exact item in the profit & loss account. In the present case, the facts are entirely different. The assessee is not maintained any books of accounts and the income of the assessee was estimated on the basis of turnover declared in the VAT returns. Thereafter, A.O. considered the bank statements and credit card statements to make addition u/s 68/69C of the Act. Being so, the judgement relied by the assessee's counsel in the case of Indwell Constructions have no application.

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

Order pronounced in the open court on 8th Mar, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th Mar, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.