

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'G' NEW DELHI

BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 5711/Del./2013
Asstt. Year : 2010-11

Sohan Lal Aggarwal,
A-1/148, Lawrence Road,
New Delhi.
(PAN : AACPL 1555H)
(Appellant) vs. Income-tax Officer,
Ward 38(3), New Delhi.
(Respondent)

Appellant by : Sh. Rajesh Mahna, Advocate
Respondent by : Sh. B. Ramanjaneyula, Sr. DR

Date of hearing : 16.08.2016
Date of pronouncement : 28.09.2016

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the assessee against the order of Id. CIT(A)-XXVIII, New Delh dated 08.08.2013 for the assessment year 2010-11 on the following grounds :

"1. That the Learned CIT(A) has erred in upholding the disallowance of expenses amounting to Rs.6,30,200/- under section 40(a)(ia) without appreciating the correct facts and law of the Income Tax Act, 1961.

2. That the Learned CIT(A) has failed in appreciating that in spite of fact that the bills, vouchers were produced before the AO and CIT(A) have disallowed the expenses of Rs.6,30,200/- u/s. 40(a)(ia) of the IT Act keeping view the facts no disallowance can be made.

3. That the Learned CIT(A) has erred in law and on facts in rejecting books of account of the assessee under section 145. The action being arbitrary based on conjectures and surmises as there were no grounds.

4. That the learned CIT(A) has wrongly computed the profit at 4% of the turnover while rejecting the book results of the assessee. This has no relevance with the past history or the reasons of rejection of books of accounts.

5. That the learned CIT(A) has further failed to follow the principles of natural justice while deciding the appeal. As also failed to uphold the addition as well as rejection of books of accounts.”

2. The brief facts of the case are that the assessee filed its return of income on 25.09.2010 declaring income of Rs.8,99,500/-. The return was processed u/s. 143(1) and selected for scrutiny. Notice u/s. 143(2) was issued on 24.08.2011 and questionnaires were issued time to time. The Assessing Officer noted that the assessee is a civil contractor and he has shown turnover of Rs.5.72 crores declaring net profit of Rs.11,40,215/- which gives net profit ratio at 2%. The Assessing Officer issued notice and required the details as per notice. The case was fixed on 30.08.2012. In the assessment proceedings, on 21.08.2012 the assessee was asked to produce books of account and furnish bills and vouchers in respect of the expenses debited to the profit and loss account. The assessee did not comply with the requirements on the given date and again opportunity was given to the assessee on dated 11.10.2012. The AR of the assessee attended on 04.10.2012, but he did not produce the required

details. The Id. Assessing Officer issued show cause notice on 12.10.2012 for rejection of books of account and time was granted upto 19.10.2012. However, no compliance was made by the assessee upto 19.10.2012. Therefore, the Assessing Officer rejected the assessee's books of account u/s. 145 of the IT Act on the following grounds :

"a) The assessee has not been able to produce the bills/vouchers in support of expenses debited to P & L Account and despite being directed to furnish the names and addresses of concerns from whom it had made purchases exceeding Rs.1 lakh during the year under consideration for verification of such expenses, no details were filed for well over a period of over three months, it is held that the book results of the assessee remain unverifiable.

b) The assessee has been showing a very low net profit of 2% of gross receipts and upon being put to the test of verification of such expenses, there has been no reply from the assessee, particularly so when the complete names and addresses of persons from whom purchases were declared were specifically sought as detailed above.

c) The assessee is also not reported to have been maintaining a day to day stock record as certified by the auditor in para 9(b) of the Audit Report in Form 3 CD. Since the assessee has refrained from furnishing verifiable details of the suppliers and has also not produced the purchase bills, the quantitative tally of the material consumed can also not be established.

d) Judicial opinion on the issue of rejection of book results u/s. 145 of IT Act is consistently to the effect that in the absence of the vouchers and quantitative tally of stock considered with other underlying circumstances, profit can legitimately be estimated by the Assessing Officer, as held by the Hon'ble Supreme Court as well as various High Courts of the land in the following citations:

- i) S.N. Namasiwayam Chettiar v CIT (SC) 38 ITR 579*
- (ii) Awadesh Pratap Singh Abdul Rehman & Bros v CIT (All.) 210 ITR 406*
- (iii). Dhondiram Dalichand vs. CIT (Bom) 81 ITR 609*
- (iv). Punjab Trading Co. Ltd vs. CIT (Pun.) 53 ITR 335*

(v). Bhai Sunder Das Sardar Singh (P) Ltd. vs. CIT(Del.) 84 ITR 106

In the instant case, the assessee has neither produced bills/vouchers, nor given addresses of its suppliers thereby preventing independent verification. It does not maintain any quantitative tally of its stock or stock records and its profit rate is also lower than that declared by similar placed contractors. In view of these defects, the unsubstantiated book results of the assessee cannot be accepted as declared by him."

3. The Assessing Officer applied 4% net profit and accordingly calculated profit of Rs.22,88,428/-.

4. On perusal of profit and loss account, the Assessing Officer noted that a sum of Rs.2,12,000/- has been debited towards mixer rent and another Rs.4,18,200/- has been debited towards hot mix plant rent. On these two payments, no TDS was deducted at the time of making the payment to the payee. Therefore, the AO disallowed these payments u/s. 40(a)(ia) of the Act. Aggrieved by the order of AO, the assessee filed appeal before the Id. CIT(A) and the assessee also filed some additional evidences before the Id. CIT(A), but he did not file any application u/r 46A. After considering the matter, the Id. CIT(A) upheld the order of the Assessing Officer. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. AR of the assessee reiterated the submissions made before the Id. CIT(A) and the Id. DR relied on the orders of the authorities below.

6. After hearing the parties and perusing the entire materials on record, we find that the assessee did not file the details as required by the Assessing Officer by various notices and questionnaires to verify the book version of the assessee. The assessing officer gave sufficient opportunities to the assessee. However, the assessee submitted a medical certificate before the Id. CIT(A). The grounds of rejection of accounts also do not stand rebutted on the part of the assessee. Therefore, for want of requisite details, bills and vouchers, the book version of the assessee was not open for verification. In presence of these facts, the AO had no alternative except to reject the books of account of the assessee. In our opinion, the rejection of books of account made by the AO deserves to be upheld.

7. We also find that the AO has considered the profit rate of 4% as appropriate keeping in view the similarly placed other contractors, which in view of non-production of bills and vouchers before the AO appears to be justified. It is notable that the Assessee had filed bills and vouchers before the Id. CIT(A) as additional evidence without filing any application u/r. 46A, but

those bills and vouchers pertained only to plants rent. A medical certificate was also filed. However, no bills and vouchers with respect to other business expenses were produced even before the Id. CIT(A) or the AO. In such state of affairs, the net profit rate applied and affirmed by the Id. Authorities below at the rate of 4% is quite justified. It is, however, worthwhile to note that once the authorities below have applied the net profit rate of 4% on the gross receipts, in our opinion, this will take care of all expenditures incurred by the assessee. Therefore, no separate disallowance of expenditure is required u/s. 40(a)(ia) of the IT Act. We, therefore, delete the addition made u/s. 40(a)(ia) of the Act.

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

Order pronounced in the open court on 28.09.2016.

Sd/-
(I.C. SUDHIR)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated : 28.09.2016

*aks/-

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*