

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTNT MEMBER)

I.T.A. No.545/Mum/2013
(Assessment year : 2007-08)

M/s Prathamesh Construction Co C/o Mr. H.S. Nandu Advocate 228-A/3, Leela Bhavan Near Koliwada Railway Station Sion (East), Mumbai 400 022	vs	ITO, Wd.17(31)(3) Mumbai
PAN : AAFFP0873K		
(Appellant)		(Respondent)

Appellant by	Shri Apurva Shah
Respondent by	Shri Mukesh Jain

Date of hearing : 27-04-2016
Date of pronouncement : 29-04-2016

ORDER

PER ASHWANI TNEJA, AM

This appeal has been filed by the assessee against the order of
Id.Commissioner of Income-tax(Appeals)-19, Mumbai [hereinafter

called "CIT(A)"] dated 10-10-2012 passed against the assessment order u/s 143(3) dated 31-12-2009 for Assessment Year 2007-08 raising the following grounds of appeal:

"1) The CIT (A) erred to conf111TI rejection of the appellants statutorily audited books of accounts.

2) The CIT(A) failed to appreciate factual matrix and practical reality.

3)The appellant's negative income at Rs 37,34,685/- in the status of firm ought to have been accepted assessed for being carried forward in the subsequent account year.

4) The authorities below have hurled humiliation upon the appellant by casting aspersions, (A) "to defraud Revenue"; (B) "the Completion Certificate is obtained fraudulently" without brining clinching concrete adverse contrary evidence material upon record.

5) The CBDT in response to RTI application enlightened that government of Maharashtra State and Law Ministry of Central Government both took very elongated time which was cause for delayed issuance of envisaged notification under section 80IB (10).

6) The CIT(A) and the Assessing Officer each one failed to weigh the arguments contentions judiciously and had unjustifiably violated principles of equity rules of natural justice. Fairness to the appellant is absent all throughout.

7) The appellant denies the detrimental tax liability as payable hence interest charged under section 234B, 234C and 234D disputed as non applicable.

8) The contentions, explanation, pleas, proofs etc put before the Lower authorities whatsoever the context applies, is implicit kindly be adjudged treated as specific grounds renewed herein.

9) The appellant humbly prays most respectfully urges to condone delay, if any for presenting the appeal herein within time prescribed, cause being circumstances beyond control and for good sufficient reason. The leniency in the matter earnestly requested."

3. During the course of hearing arguments were made by Shri Apurva Shah appeared on behalf of the assessee and Shri Mukesh Jain, the Id.DR on behalf of the revenue . The Id.counsel submitted that he is not pressing all he grounds except ground No.3 Hence grounds 1,2 and 4 to 8 are dismissed as not pressed. We shall adjudicate ground No.3 hereunder.

4. - It has been submitted by the Id.counsel during the course of hearing that addition was made by rejecting the books of account and estimating the gross profit of the assessee and in addition to that another addition was made by making disallowances u/s 40(a)(ia).It was submitted by the Id. Counsel that he is not disputing rejection of books of account and estimation of profit. His only grievance is that while computing the gross profit rate some mistakes have been done. The gross profit rate of financial year 2004-05 and 2005-06 were considered and average of the same was adopted as gross profit of the impugned year. It was submitted that some errors were done by the assessing officer while computing the gross profit rate of financial year 2004-05 further submitted that once income of the assessee was estimated, no further specific disallowance u/s 40(a)(ia) could be made under the law as the same was beyond the jurisdiction of the Assessing Officer, after assessing the income on estimate basis.

5. Per contra, the Id.DR submitted that the mistakes pointed out by the Id.counsel were not pleaded before the lower authorities and these need verification by the Assessing Officer.

6. We have heard both the parties and find that gross profit rate of and 2005-06 have not been computed on identical basis. It is raeted that government charges, plot development charges and architech's fee were not considered while computing the gross profit rate of financial year 2004-05 whereas these items were considered as expenses while computing the gross profit rate of financial year 2005-06. In our view, the factual submissions made before us by the Id.counsel cannot be ignored and require proper verification by the Assessing Officer. Another submission of the assessee is that once income is estimated, then, no further specific disallowance / addition i.e. disallowance u/s 40(a)(ia) could have been made, also requires serious consideration by the Assessing Officer. Under these circumstances, we find it proper to send these issues back to the file of Assessing Officer. The Assessing Officer shall take into account all the submissions and evidences as may be filed by the assessee and shall consider the same on objective basis to work out an appropriate rate of gross profit while estimating the income of the assessee. The assessing officer shall also consider any other submission of the assessee i .e no disallowance should be made u/s 40(a)(ia) once income of the assessee is assessed on estimate basis.

The assessee is free to raise all legal and factual issues before the Assessing Officer for which the assessee shall be given adequate opportunity of being heard. Thus, with these directions, the aforesaid issues are sent back to the file of the Assessing Officer for fresh adjudication. All other grounds are dismissed.

7. As a result, the appeal may be treated as partly allowed for statistical purpose.

Order pronounced in the open court at the time of hearing.

Sd/-

(JOGINDER SINGH)
JUDICIAL MEMBER

Mumbai, Dt : 29th April, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, "B" Bench
(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES