



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA no.372/Nag./2013
(Assessment Year : 2007-08)

B.K. Construction
P.M. Gandhi & Co., C.A.
Pushpam, Tilakwadi
Opp. Shrotri Hospital
Yavatmal 445 001
PAN – AAEFB4266B

..... Appellant

v/s

Addl. Commissioner of Income Tax
Wardha Range, Wardha

..... Respondent

Assessee by : Shri P.M. Gandhi
Revenue by : Shri A.R. Ninawe

Date of Hearing – 27.06.2017

Date of Order – 29.06.2017

ORDER

PER AMARJIT SINGH, J.M.

The assessee has filed the present appeal against the order dated 31st July 2013, passed by the learned Commissioner (Appeals)-II, Nagpur, relevant to the assessment year 2007-08.

2. The assessee has raised the following grounds:-

"1. Based on the facts and circumstances of the case, assessment order passed by learned Addl. Commission of Income Tax, Wardha Range, is ab initio bad in the eyes of law and needs to be set aside.

2. Addition of ₹ 12,00,000 made on account of entries in impounded diary B-13, needs to be deleted as the same is covered by declaration of ₹ 12.00 lacs under survey and already included in return of income.

3. Addition of ₹ 15,21,488 on account of disallowance of labour charges @ 5% is excessive and unwarranted and needs to be deleted.

4. Interest charged u/s 234B and 234D of the Income Tax Act, 1961 being consequential in nature needs to be deleted.

3. Brief facts of the case are that the assessee filed its return of income on 15th November 2007, declaring total income to the tune of ₹ 26,79,110. The assessee is engaged in the business of executing civil contracts. The survey was conducted at the business premises of the assessee on 28th March 2007. The assessee declared additional income to the tune of ₹ 12 lakh. Subsequently, the assessment was completed under section 143(3) of Income Tax Act, 1961 (for short "the Act") on 15th December 2009 after making disallowance for ₹ 4,18,850 under section 40(a)(ia) of the Act. Subsequently, order under section 263 of the Act was passed by the learned Commissioner on 29th April 2010 in which the entire assessment was ordered to be set aside to be made denovo. The assessee was asked to furnish books of account, bills, vouchers, etc. The assessee failed to produce the said record but produced the copy of panchanama of Police Station, Pusad, in which it was reported that the record of the assessee was burnt. Thereafter,

the assessment of the assessee was completed on the basis of records available and the income of the assessee was assessed to the tune of ₹ 88,12,950 vide order dated 31st December 2010. Aggrieved by the said order, the assessee filed an appeal before the learned Commissioner (Appeals) who partly allowed the appeal of the assessee. Since the assessee was not satisfied with regard to the other claim which was not allowed by the learned Commissioner (Appeals), therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

4. The learned Counsel for the assessee did not press this issue. Therefore, this issue is decided in favour of the Revenue and against the assessee being not pressed.

ISSUE NO.2

5. Under this issue, the assessee has challenged the confirmation of disallowance of Rs.12 lakh made on account of entry found in the impounded diary B-13. In the present case, the case of the assessee was taken up in view of the provisions of section 263 of the Act. At the time of scrutiny, cash book, register and diary no.B-13 were impounded and accordingly, on account of non-explanation about the entry in the said documents, the assessee declared an amount of Rs.12 lakh as his income. The declaration was accompanied by challan

of tax payment of ₹ 4,03,920 dated 2nd August 2007, copy of which lies at Page-53 to 59 of the paper book. Subsequently, the Assessing Officer on the basis of diary, further made the addition to the tune of ₹ 12 lakh. The Assessing Officer was of the view that the said entry was not verified at the time of surrender of income to the tune of ₹ 12 lakh. The documents were impounded on 28th March 2007. The assessee made the declaration on 2nd August 2007, after the gap of about four months. This situation leads to the fact that the documents were duly verified. If it is not examined then only on the basis of the material impounded, the assessee had already surrendered the income to the tune of ₹ 12 lakh. Thereafter, on the basis of search, further addition of ₹ 12 lakh on the basis of diary does not seem justifiable. No other documents are highlighted by the Revenue on the basis of which the assessee surrendered the income to the tune of ₹ 12 lakh. Taking the contradictory plea at the time of assessment and at the time of appeal, lead to the fact that the assessee was unable to explain the entry in the diary B-13 or other documents impounded, therefore, the assessee has surrendered the additional income to the tune of ₹ 12 lakh. In view of the notice dated 31st August 2007 lies at Page-63 of the paper book it came to the notice that the kachha cash book diary and register were impounded on 28th March 2007, whereas the assessee voluntarily declared his additional income on 2nd August

2007. If the diary was not examined then in these circumstances also surrender of additional income nowhere leads to the justification of addition of ₹ 12 lakh on the basis of diary B-13. Accordingly, the addition does not seem justifiable, hence, not liable to be sustained in the eyes of law. Accordingly, we set aside the findings of the learned Commissioner (Appeals) on this issue and delete the addition of ₹ 12 lakh. Thus, the issue is decided against the Revenue and in favour of the assessee.

ISSUE NO.3

6. Under this issue, the assessee has challenged the confirmation of addition of ₹ 15,21,488 on account of disallowance of labour charges @ 5%. In the instant case, the assessee claimed the labour charges which was disallowed to the extent of 5% on estimation basis. The books of account and audited report, etc., were not rejected by the Assessing Officer. The disallowance to the extent of 5% was without any basis or material available with the Assessing Officer. It is purely estimation. The disallowance is not sustainable on the basis of estimation without rejection of books of account. In this regard, we also find support of law settled in the case of ACIT v/s Allied Construction, [2007] 106 TTJ 616 (Del.), wherein it has been held that "*ad-hoc disallowance of labour expenses could not be made simply on the basis that the vouchers were self-made and not reliable without*

making any test check and pinpoint which item of expenditure is not verifiable". This issue being covered by the aforesaid decision of the Tribunal, respectfully following the same, we delete the addition @ 5% of the labour charges to the tune of ₹ 15,21,488 this issue is also decided in favour of the assessee and against the Revenue.

ISSUE NO.4 AND 5

7. These issues are consequential in nature depending upon the demand raised by the Revenue, therefore, needs no adjudication at all.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 29.06.2017

**Sd/-
P.K. BANSAL
VICE PRESIDENT**

**Sd/-
AMARJIT SINGH
JUDICIAL MEMBER**

NAGPUR, DATED: 29.06.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt.Registrar)
ITAT, Nagpur