

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 6981/Del/2017
A.Y. 2014-15**

Sh. Ram Narain Contractor 60/75, Laxman Vihar Jansath road Muzaffarnagar 251 001	<u>Vs.</u>	DCIT, Circle 2 Muzaffarnagar 251 002
(Appellant)		(Respondent)

Appellant by	Shri Prem Prakash & Sh. Ashish Agrawal, Advs
Respondent by	Shri Atiq Ahmad, Sr.D.R
Date of Hearing	18 th December, 2017
Date of Pronouncement	19 th December, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeal has been filed by assessee against the order dated 28/09/17 passed by Ld.CIT(A), Muzaffarnagar for assessment year 2014-15 on the following grounds of appeal:

“1. That the order is against law and facts on record.

2. That Ld.CIT(A) was wrong in rejecting the appeal and confirming the net profit of 8% without rejecting the facts submitted by the assessee before AO and him.”

2. Brief facts of the case are as under:

Assessee filed its return of income on 08/11/14 declaring total income of Rs.20,34,790/-. The return was selected for scrutiny and notices under section 143(2) was issued along with notice under section 142(1). In compliance to the statutory notices, representatives of assessee appeared from time to time and filed requisite details/evidences, which is placed on the file for due consideration during the course of assessment proceedings. The Ld. AO however observed that Ledger and cash book were only produced which have been examined on test check basis.

2.1. Ld. AO on perusal of the profit and loss account found that assessee declared net profit of Rs.21,34,790/- @ 2.01% against the gross receipt of Rs. 10,59,96,380/-. Ld. AO was of considered opinion that profits declared by assessee was very low. Accordingly he called upon the assessee to justify the same to produce the bills and vouchers for verification of receipts.

2.2. Assessee submitted that during the year due to heavy rains on the hilly areas and also at Kedarnath area, where the works contract were going on were disturbed assessee had to incur huge expenses on labour and materials. It was also submitted by assessee vide reply dated 31/08/16 that he maintains 'Rokar & Khata' and vouchers of expenses are not available with him.

2.3. Ld. AO thus concluded that as assessee had failed to furnish complete bills of materials purchased, the value of material at site declared by assessee and trading result could not be verified. He rejected the books submitted by assessee under section 145 (3) of the act as they did not depict the correct picture of the state of affairs for the year under consideration. Ld. AO applied 8% on the estimate basis on the total receipt of Rs. 10,59,96,380/-and computed the income at Rs. 84,79,710/-. Ld. AO thus added the difference being the declared income and assessed income amounting to Rs. 63,44,920/-in the hands of assessee.

2.4. Aggrieved by the order of Ld. AO assessee preferred appeal before Ld. CIT (A), who confirmed the estimation made by Ld. AO.

2.5. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

3. Ld.AR submitted that assessee is a civil contractor and had maintained only 'Rokar & Khata' for the year under consideration. He further submitted that gross receipts during the year under consideration are progressive as it is about 2.44 times more from the gross receipts during assessment year 2013-14. It is observed from various submissions placed on record before us that during assessment year 2013-14 assessee had declared net profit at 9.17%.

4. Ld.AR further submitted that during the year assessee did works in hilly areas specially in Kedarnath, where there was heavy rains and floods due to which the ongoing work were disturbed and assessee had to incur huge expenses on more materials and labour.

Ld.AR relied upon the certificate issued by 'Grameen Nirman Vibhag' placed at page 92 and 93 of the paper book, wherein it has been certified that due to landslide at Uttarakhand and Kedarnath respectively, assessee had to stop work causing huge expenses to him.

5. Ld.AR has also placed in the paper book the newspaper cuttings at page 9-10, 16-49 of paper book, wherein the disaster has been reported. Ld.AR requested for a considerable approach taking into consideration the overall situation that prevailed during the relevant period.

5.1. Ld. DR placed his reliance upon the orders of the authorities below.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us.

6.1. In the paper book assessee has placed the work orders at page 11-15. It is observed that the work sought to be done by assessee was mainly at Srinagar, Mussoorie. Details of which are as under:

- Work orders placed at page 11 is dated 08/06/13 wherein the contract bond has been accepted by Supdt. Engineer PMGSY circle, PWD, Srinagar. The date of start has been mentioned to be June,2013 and completion date has been shown as September, 2014.
- Work order placed at page 12 is dated 17/01/14 wherein the contract bond has been accepted by Supt. Engineer PMGSY circle, PWD, Srinagar. The commencement date has been shown as 17/01/14 and the completion date is 16/07/15.

- Work order at page 13 is dated 15/01/11 wherein the contract bond has been accepted by Supt. Engineer PMGSY circle, PWD, Srinagar. The commencement date has been 15/01/11 and date of completion is 14/01/12.
- Work order placed at page 40 is dated 24/10/13 wherein the contract bond has been accepted by Supt. Engineer, PMGSY circle, PWD, Srinagar. The commencement date has been 24/10/13 and the completion date is 23/01/15.
- Work order placed at page 15 is dated 31/05/13 wherein the contract bond has been accepted by Supt. Engineer PMGSY circle, PWD, Mussoorie. The commencement date has been 31/05/13 and the completion date is 30/08/14.

6.2. It is observed that all these work orders have been executed by the relevant officer on behalf of Governor of Uttarakhand. Ld.AO has estimated the Net profit at 8% as assessee had not produced vouchers to verify the expenses incurred by him. Assessee has further not been able to produce all these details before us. We are, therefore, of the considered opinion that some amount of estimation has to be made, as assessee has earned huge profits which has been declared at approximately 9% during assessment year 2013-14 which is a part of his written submissions, based on which the stay was granted to assessee.

6.3. However considerate view needs to be taken looking into the amount of destruction caused due to the natural calamity, during the financial year relevant to assessment year under consideration. We further clarify that, the view taken in the present case may not

be considered as a precedent for any other assessment years. A considerate approach has been adopted only because of natural disaster, that has caused loss of materials as the entire north-east areas were affected. As the contract bonds obtained by assessee pertained to north-east areas, we consider it appropriate to compute the net profit at 4% for the year under consideration.

6.4. Accordingly the grounds raised by assessee stand partly allowed.

7. In the result appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 19/12/2017.

Sd/-

(G.D.AGRAWAL)
President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated: 19th December, 2017.

*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

ITA 6981/Del/2017 Assessment Year 2014-15
Sh. Ram Narain vs. DCIT

S.No.	Details	Date	Initials	Designation
1	Draft dictated on Dragon	/12/17		Sr. PS/PS
2	Draft placed before author	/12/17		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			