



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.355/Rpr/2014
Assessment Year : 2010-2011

DCIT, 1(1), Raipur	Vs.	Shri Rajesh Makhijani, Shantideep Colony, Naveen Road, Kawardh
PAN/GIR No.ADWPM 3488 R		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Mrs Shital Verma, DR

Date of Hearing : 16/01/ 2018
Date of Pronouncement : 17/01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-Raipur, dated 30.9.2014 for the assessment year 2010-2011.

2. Grounds of appeal raised by the revenue are as under:

"Whether in law and on facts and circumstances of the case, the CI(A) has erred in restricting the addition to Rs.1,69,908/- out of disallowance made by the AO on account of expenses incurred on purchase of materials, labour charges, transportation charges, etc thereby giving relief of Rs.55,53,733/-."

2. Whether in law and on facts and circumstances of the case, the CI(A) has erred in deleting the addition of Rs.18,95,000/- made by the AO on account of unexplained cash credit u/s.68 of the I.T.Act, 1961 specially when the Id CIT(A) has dismissed the



ground related in making of assessment u/s.144 of the I.T.Act, 1961.”

3. Briefly stated the relevant facts are that the assessee derives income from execution of civil contract works. The assessee filed return of income on 18.3.2011 showing total income at Rs.13,72,490/-. The case was selected for scrutiny. Notices 143(2) and 142(1) were issued to the assessee to attend the hearing and produce books of account. However, the assessee failed to appear before the Assessing officer and produce books of account. On the basis of documents filed by the assessee like tax audit report, audited financial statement and copy of some ledgers, the Assessing Officer completed assessment u/s.144 of the Act assessing the income at Rs.89,91,131/- after making disallowances out of expenses aggregating to Rs.57,23,641/- on adhoc basis and Rs.18,95,000/- as unsecured loans.

4. The Assessing Officer observed that since the assessee has not produced books of account, he disallowed 10% of the following expenses:

1. Purchase exp. Of material	:	Rs.20,,69,418/-
2. Labour charges	:	Rs.18,36,151/-
3. Transportation etc. charges	:	Rs.17,28,961/-

He also disallowed depreciation @ 100% and added Rs.89,061/-, aggregating to total disallowance at Rs.57,23,641/-. The Assessing Officer



also observed that the assessee had shown profit at 3.12% while in other comparable cases; the net profit was shown at 6.69% and 6%.

5. On appeal, the CIT(A) called for a remand report from the Assessing Officer. He further observed that during the remand proceedings, the books of account of the assessee were not called for, which proves that the Assessing Officer has avoided to verify the correctness and completeness of the claim and opined that the expenses are not verifiable. The CIT(A) following the decision of the Raipur Bench of the Tribunal in the case of C.M Makhija n ITA No.568/Nag/2008, wherein, the NP was estimated by the Assessing Officer at 5% while it was reduced by the CIT(A) to 4.3% and the Tribunal directed to adopt net profit at 3.5% and directed the Assessing Officer to apply net profit at 3.5% of the total receipts after considering deductions including depreciation and add the difference to the returned income and partly allowed the appeal of the assessee.

6. Ld D.R. submitted that the Assessing Officer has made estimation of expenditure whereas the CIT(A) has erred in restricting the addition in respect of addition on percentage basis.

7. We have heard the submissions of Id D.R., perused the orders of lower authorities and materials available on record. We find the Assessing Officer has made assessment u/s.144 of the Act and made disallowance at 10% of



the total receipts, relying on tax audit report and copies of some alleged accounts. The CIT(A) has reported that during remand proceedings, the books of account were not called for verification. The CIT(A) further observed that the net profit shown by the assessee appears to be low. The CIT(A) relied on the decision of the Tribunal in the case of CM Makhija (supra) and directed the Assessing Officer to apply net profit at 3.5% of the total receipts and deleted the disallowance made by the Assessing Officer. Before us, Id D.R. could not point out any specific mistake in the order of the CIT(A). As the CIT(A) has followed the decision of the Tribunal in the case of CM Makhija (supra) to adopt the net profit rate at 3.5%, which is higher than the net profit shown by the assessee, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed. Ground No.1 of appeal is dismissed.

8. With regards to Ground No.2 of appeal, we have heard Id D.R. The Assessing Officer observed that the assessee has received Rs.18,95,000/- from four persons as loans. Since the assessee has failed to substantiate the identity and creditworthiness of the creditors and genuineness of transaction, the Assessing Officer disallowed the same.

9. The CIT(A) observed that the assessee has furnished complete postal address and PAN particulars of the creditors and address of the creditors to



the Assessing Officers with whom the creditors are assessed to tax. Therefore, he deleted the addition made by the Assessing Officer.

10. Ld D.R, relying on the decisions in the case of [Commissioner of Income-tax vs. Devi Prasad Vishwanath Prasad](#) [1969] 72 ITR 194 (SC) and [Grover Fabrics \(India\) P. Ltd. vs. Commissioner of Income-tax](#) [2011] 332 ITR 312 (P&H) submitted that there is no bar for addition u/s 68 and a trading addition for the same year.

11. We find that the assessee has furnished the details of the income tax returns alongwith PAN. It has also been informed that the lenders have given confirmation. Therefore, the assessee has complied with the conditions prescribed in the provisions of Sec. 68 of ITAct. Considering the totality of facts and circumstances of the case, especially when no adverse remarks is on record, we find no reason to reverse the findings of the Id CIT(A). Hence, we reject the ground of appeal taken by the revenue.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 17 /01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 17 /01/2018



B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : DCIT, 1(1), Raipur
2.	The Respondent. Shri Rajesh Makhijani, Shantideep Colony, Naveen Road, Kawardh
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur