



**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.388/Rpr/2014
Assessment Year : 2010-2011

DCIT, 2(1), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur	Vs.	Shyam Infratech, 252, 1 st floor, Samta Colony, Raipur
PAN/GIR No.ABKFS 6452 M		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Mrs Shabane Parveen, DR

Date of Hearing : 17/01/ 2018
Date of Pronouncement : 18/01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-Raipur, dated 27.10.2014 for the assessment year 2010-2011.

2. In Ground No.1 of appeal, the grievance of the revenue is that the CIT(A) erred in sustaining the addition to Rs.6,77,080/- out of disallowance on account of expenses claimed in P&L account.

3. The relevant facts of the case are like this. The assessee is a partner firm deriving income from civil contract business. The Assessing officer noticed that the assessee has shown net profit before interest and



remuneration at 2.39% on the turnover of Rs.19.22 crores, whereas on comparable cases, the net profit was much higher. He observed that the assessee has failed to produce books of account but the books have been audited, therefore, they are not rejected and no net profit is estimated in view of comparable cases. In absence of bills and vouchers, the Assessing officer estimated adhoc disallowance ranging from 5 to 10% of the total claim and determined the addition at Rs.53,95,151/-.

4. On appeal, the assessee submitted that the assessee has maintained complete day to day books of account, which are duly audited by the tax auditor and produced before the Assessing Officer. The audited balance sheet and tax audit report were furnished at the time of assessment proceedings and no adverse inference was drawn by the Assessing Officer, therefore, the entire addition made by the Assessing officer is liable to be deleted.

5. The CIT(A) after considering the submission of the assessee noted that undisputedly, the assessee has failed to produce books of account but the assessee has claimed to have audited the books of account. The Assessing Officer has made adhoc addition without recording any dissatisfaction with the reasonableness of the quantum of deduction claimed under various heads. He also noted that there is no finding in the assessment order to the effect that the expenses claimed by the assessee on account of purchase of



materials, labour charges or salary were disproportionately high with reference to the specific nature of civil construction undertaken by the assessee. He also noted that the assessed income is nearly 5.32% of the turnover which is higher than the comparable instances referred by the Assessing Officer. The CIT(A) relying on various judgements held that the accounts are audited to which, the Assessing officer ought to have given due consideration. However, to meet the ends of justice he estimated the net profit @ 2.75% of gross contract receipts and sustained addition of Rs.6,77,080/- as against Rs.53,95,151/- made by the Assessing officer.

6. Being aggrieved, the revenue is in appeal before us.

7. Ld D.R. submitted that the Assessing Officer has referred comparable cases and made addition and the CIT(A) is not justified in restricting the same to Rs.6,77,080/-.

8. We have heard ld D.R. and perused the materials available on record. Before us, ld D.R. could not point out any mistake in the order of the CIT(A). We find that the books of account of the assessee are audited and the assessee has furnished the tax audit report to which no adverse inference was drawn by the Assessing officer. We find that the CIT(A) has dealt on the issue and relied on various judicial pronouncement on this matter and estimated the net profit @ 2.75% of gross contract receipts and sustained



addition of Rs.6,77,080/-. Hence, we uphold his order and dismiss the ground of appeal of the revenue.

9. In Ground No.2 of appeal, the grievance of the revenue is that the CIT(A) erred in deleting the disallowance out of interest expenses of Rs.2,19,004/- made by the AO on account of interest on fund diverted for non-business purposes.

10. The Assessing Officer found that the assessee has paid interest of Rs.79,82,325/- on the loan account as against interest paid of Rs.46,30,267/- in the preceding year. The Assessing officer also noticed that the assessee firm has advanced various amounts to different parties, therefore, the assessee was required to explain the mode of advance. The assessee submitted that all loans are in the nature of business advances. The Assessing Officer verified the ledger account and identified the transactions which are for the business purposes. For other advances which have no business transaction, the Assessing officer considered for disallowance of interest u/s.36(1)(iii) and added Rs.2,19,004/-.

11. Before the CIT(A), the assessee furnished ledger accounts of five parties and submitted that the advances were made for normal course of business.



12. The CIT(A) deleted the disallowance by observing that the Assessing officer has not brought on record any evidence to demonstrate nexus of the assessee with five parties. The CIT(A) has relied on various judicial pronouncements including the decision of Hon'ble Supreme Court in the case of S.A. Builders, 288 ITR 1 (SC), wherein, it was held that interest on borrowed funds cannot be disallowed if the assessee has advanced interest free loan to a sister concern as a measure of commercial expediency. The assessee has adopted the alternative of borrowing money from the market instead of liquidating its own assets.

13. After considering the material on record and the arguments of Id D.R, we find that except relying on the order of the Assessing Officer, Id .D.R. could not point out any specific error in the order of the CIT(A) and could not controvert the findings of the CIT(A) by bringing any positive material on record that the advances were not made to five parties for normal course of business. In view of above, we confirm the order of the CIT(A) in deleting the addition of Rs.2,19,004/-.

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

Order pronounced on 18 /01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 18 /01/2018



B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : DCIT, 2(1), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipu
2.	The Respondent. floor, Samta Colony, Raipur
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