

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 335/Hyd/2017
Assessment Year: 2011-12**

M/s Neueon Towers Ltd., vs. Dy. Commissioner of Income-
(Formerly known as M/s Sujana tax, Circle – 3(2), Hyderabad.
Towers Ltd.), Hyderabad

PAN – AAKCS7820F
(Appellant)

(Respondent)

Assessee by : Shri P. Murali Mohan Rao
Revenue by : Smt. H. Vijayalakshmi

Date of hearing : 19-12-2017
Date of pronouncement : 24-01-2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal is preferred by the assessee against the order of CIT(A) – 3, Hyderabad, dated 13/12/2016 for the AY 2011-12.

2. Briefly the facts of the case are, assessee company is in the business of manufacturing of re-rolled steel products, trading in steel components and construction of telecom towers. The assessee company filed its return of income for the AY 2011-12 belatedly on 30/03/2013 declaring an income of Rs. 43,54,460/- under normal provisions and Rs. 3,75,07,584/- u/s 115JB of the income-tax Act, 1961 (in short 'the Act'). The case was selected for scrutiny under CASS and notice u/s 143(2) was issued to the assessee on

10/08/2013. In response to the said notice, assessee filed a letter dated 03/09/2013 enclosing a copy of computation and P&L account and balance sheet. Another notice u/s 142(1) dated 04/10/2013 was issued calling for various details, against which the assessee filed a letter dated 11/11/2013 furnishing part of information. According to the AO, since the assessee claimed that it is in the business of manufacturing re-rolled steel products, trading in steel components and construction of telecom towers, it is necessary to have the following information to verify the expenditure claimed by the assessee:

- (a) Books of account*
- (b) Details on nature of business*
- (c) Products produced or traded, its quantitative details.*
- (d) Details of main raw material used, its quantitative details.*
- (e) Place of purchase of raw material and its mode of transport to the factories*
- (f) Details of opening stock, purchases, sales and closing stock of manufactured goods and traded goods separately in terms of quantity and cost.*
- (g) Stock registers for movement of raw material and finished products.*
- (h) Location of factories and nature of goods produced at each factory.*
- (i) Location of stock yards and nature of goods stored there in."*

2.1 Since the assessee did not file any information, the AO rejected the book results u/s 145(1) and proceeded to estimate the income of the assessee for the following reasons:

- "1. The assessee has not produced books of account.*
- 2. The assessee has not produced evidence for all the additions claimed to have made during the year.*
- 3. The assessee has not produced details of raw material used, its quantitative details.*
- 4. The assessee has not produced details of place of purchase of raw material and its mode of transport to the factories.*
- 5. The assessee has not produced details of opening stock, purchases, sales and closing stock of manufactured goods and traded goods separately in terms of quantity and cost.*
- 6. The assessee has not produced stock registers for movement of raw material and finished products.*

7. The assessee has not produced location of factories and nature of goods produced at each factory.

8. The assessee has not produced location of stock yards and nature of goods stored there in."

2.2 AO observed that since the assessee's turnover consists of manufacturing, trading and construction of telecom towers, the assessee was asked to produce quantitative and qualitative details of turnover, but, the assessee could not produce even these details, which prove that the company has not maintained segment wise quantitative details. Therefore, the AO observed that the net profit applicable to any particular trade cannot be applied to this case. The assessee admitted a net income of Rs. 43,54,460/- on a total turnover of Rs. 1298,53,08,825/-. In percentage wise the profit works out to 0.03%. In addition to the turnover of Rs. 1298,50,08,825/-, the assessee has an other income of Rs. 2,97,90,799, it means the net profit admitted is less than the other income.

2.3 In view of the above observations, the AO estimated the income of the assessee at 1% and determined the income at Rs. 13,01,50,900/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee submitted the following additional evidence:

- "a) Abstract of sales register.*
- b) Abstract of purchase register*
- c) Confirmation from the parties to whom sales were made and also the parties from whom purchases were made along with their income-tax returns, audit report and financial statements."*

4.1 As the above information was not submitted during the assessment proceedings, the same was sent to the AO. The AO in his remand report dated 28/07/2016 reported as under:

“a) the letters 1-10-2015 & 13-6-2016 were issued to the assessee, calling for information to substantiate the additional evidence filed by the appellant before the CIT(Appeal). Despite the repeated phone calls there was no response from the appellant and the appellant did not submit any of the information called for.

b) The information called for by Assessing Officer vide Para 3 is very much essential for arriving at the correct income of the assessee.

c) Despite repeated notices either during the assessment proceedings or during the remand proceedings the information called for was not produced, therefore the assessee did not satisfy the conditions laid down in Rule 46A of I.T Rules 1962.

Therefore the Assessing Officer recommended that additional evidence should not be admitted.”

4.2 When the copy of the remand report was sent to the assessee, the assessee submitted as under:

a) that the Assessing Officer has not given reasonable opportunity to submit the information. Therefore the additional evidence was filed under Rule-46A(I)(C).

b) the information could not be submitted because of the reasons beyond the control of the assessee and because of insufficient opportunity granted by Assessing Officer for production of voluminous information.

c) Similar issue was involved in AY 09-10 wherein the Hon'ble ITAT, Hyderabad in ITA No. 1360/H/2013 has held that:

Considering totality of Facts and circumstances of the present case and the specific plea of the assessee, in the interests of justice in this case also, we are inclined to set aside the impugned order of the CIT(A) and restore the matter to the file of the Assessing Officer with similar directions. We do so and direct the Assessing Officer to re-examine the matter, after giving reasonable opportunity to the assessee to produce the books of account and other information, and re-determine the income accordingly. The directions given in the order of this Tribunal dated 13.8.2013, extracted above, apply mutatis mutandis to this case as well. Assessee is directed to cooperate with the Assessing Officer and comply with the notices, and the Assessing Officer is directed to complete the assessment afresh

in accordance with law after giving reasonable opportunity of hearing to the assessee. "

4.3 When the CIT(A) vide letter dated 16/09/2016 asked the assessee to give reasons which prevented it from submitting the information during the entire assessment and remand proceedings, there was no response from the Assessee. The CIT(A), therefore, confirmed the action of the AO by observing as under:

10. In view of the above discussion it is quite evident that the Assessing Officer called for the required information as mentioned at para 3 during the original scrutiny proceedings and also during the remand proceedings. The same was called for by the undersigned even during appeal proceedings. However, there is absolutely no response despite repeated opportunities given right from the scrutiny proceedings till the date of passing of this order. Even the additional evidence produced is not the information which was required by the Assessing Officer. The additional evidence submitted does not relate to the information called for by the Assessing Officer which is vital to the assessment. The appellant did not produce the vital/fundamental information like Books of accounts, purchase register, sales register, evidence to the transportation of goods which are vital for completing the assessment. This will only lead to obvious conclusion that whether the appellant do not possess this information or is not submitting the information as the same is in favour of the department. In these circumstances the Assessing Officer was fair enough to estimate the income @ 1% on the turnover against the income offered by the appellant in the immediate preceding year at 1.74% and for the reasons in the preceding paras the income assessed by the Assessing Officer at Rs. 13,01,50,990/- is confirmed and all the grounds are dismissed."

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. The order of the Ld. CIT (A) is bad both in law and on facts to the extent it is prejudicial to the interest of the assessee.

2. The Ld. CIT (A) erred in upholding the addition of Rs. 13,01,50,900/- by estimating the income @ 1 % on turnover, by the AO in rejecting the Audited books of account, under the companies Act as well as under the provisions of Section 44AB.

3. The Ld. CIT (A) erred in not accepting the objections/submissions made by the appellant in respect of the Remand Report submitted by the AO.

4. The Ld. CIT (A) ought to have appreciated the fact that the profit that has been admitted by the appellant is as per the audited books of accounts and where no deficiencies discrepancies were notices.

5. The Ld. CIT (A) ought to have appreciated the fact that the books of accounts submitted before the AO by the assessee are not incorrect nor incomplete and thereby the invoking of provisions u/ s 145 are against to the principles of Natural Justice and is bad in law.

6. The Ld. CIT (A) ought to have appreciated the fact that the books of accounts that have been submitted by the assessee for the AY 2009-10 were accepted by Hon'ble ITAT, Hyderabad vide its order in ITA No. 1360/Hyd/2013."

6. Ld. AR submitted that similar issue came up for consideration before the coordinate bench of this Tribunal in assessee's own case for AYs 2009-10 and 2010-11 wherein the coordinate bench remitted the matter back to the file of the AO to decide the appeal on production of the required information by allowing one more opportunity to the assessee to furnish the same before AO.

7. Ld. DR, on the other hand, relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material facts on record. Similar issue came up for consideration before the coordinate bench of this Tribunal in assessee's own case for AY 2009-10 wherein the coordinate bench has held as under:

"10. Considering the submissions of the parties and keeping in view the interest of justice, we allow one more opportunity to the assessee for production of its books of accounts and other documents before the Assessing Officer to substantiate its claim and accordingly, set aside the Order of the CIT(A) and

remit the matter to the file of the Assessing Officer for de novo assessment after examining the books of accounts and other documents. We also direct the assessee to produce all its books of accounts, documents, bills, invoices and any other information called for by the Assessing Officer and cooperate in finalisation of the proceeding. In the event, the assessee does not cooperate by producing the books of accounts and other information called for by the Assessing Officer or if the Assessing Officer on examination of the books of accounts and other documents finds that there are discrepancies which the assessee is not, able to explain, the Assessing Officer would be at liberty to take an independent decision in the matter in accordance with law. The Assessing Officer shall afford a reasonable opportunity of being heard to the assessee.”

Even in AY 2010-11, following the decision in AY 2009-10, the coordinate bench remitted the issue to the file of the AO. As the issue under consideration is materially identical to that of AY 2009-10 & 2010-11, following the decision in AY 2009-10, we remit the issue to the file of the AO with a direction to decide the issue as per the directions given by the coordinate bench in AY 2009-10. We noticed that assessee has not submitted any information before lower authorities. Even though it might have difficulties in submitting various details, it is the duty of the assessee to take the authorities into confidence and it cannot remain silent by wasting judicial time of the authorities. We direct the assessee to cooperate with the authorities by submitting required information before the AO to complete the assessment without further delay. At the same time, we direct the AO to consider the submissions of the assessee judiciously and in case it is found that assessee is unable to furnish the required information within time, AO can sustain the addition.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 24th January, 2018.

**Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER**

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 24th January, 2018

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Copy to:-

- 1) *M/s Neueon Towers Ltd, C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad – 82*
- 2) *DCIT, Circle – 3(2), Hyd.*
- 3) *CIT(A) – 3, Hyderabad.*
- 4) *Pr. CIT – 3, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*