

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH (SMC), RANCHI

[Before Hon'ble Shri J. Sudhakar Reddy]

I.T.A. No. 238/Ran/2016
Assessment Year : 2011-12

Shri Ankur Jain.....*Appellant*
C/o M/s. Tarran Lal Tarachand,
Upper Bazar,
Ranchi – 834 001.
[PAN: ACSPJ 2727 P]

Income Tax Officer.....*Respondent*
Ward 1(1)
Ranchi.

Appearances by:

Shri Devesh Poddar, Advocate appearing on behalf of the Assessee.
Shri P.K. Mondal appearing on behalf of the Revenue.

Date of concluding the hearing : February 22, 2018

Date of pronouncing the order : February 28, 2018

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of CIT (Appeals) Ranchi dated 09.05.2016 for the assessment year 2011-12.

2. After hearing rival contentions, I find that the only issue in dispute before me is the rate of profit that has to be applied on the total deposit found in the bank account of the assessee as an assumption that this is the turnover of the assessee. The assessee submits that the percentage of profit on this turnover should be estimated as in the case of the partnership firm Tarran Lal Tarachand, of which the assessee is a partnership and as the allegation is that the assessee to carried out similar business as that of this firm. It was submitted that the partnership firm declared 0.6% of its turnover as

profit and that the profit estimated at 8% is highly excessive. It was contended that even if it is considered that the assessee acted as an agent, that the commissioning income cannot be more than 1 to 2% of the total turnover. The learned DR submits that once the assessee has not maintained books of accounts. Net Profit has to be estimated at 8% of the turnover as specified in the Act.

3. After considering all the facts on record in my view, ends of justice would be met if the profit is estimated at 5% of the total turnover as the assessee has not maintained any books of accounts and section 44AF of the Act prescribed this percentage. In the result, this ground of the assessee is allowed in part.

3. The second issue is regarding levy of interest under section 234A and 234B of the Act.

4. The issue is whether interest u/s 234A and 234B is to be levied only on the total income disclosed by the assessee in the return of income or on the total income determined by the A.O. in the assessment order i.e. assessed income. The Hon'ble Jharkhand High Court in T.A. No. 38 of 2010 order dated 25th July, 2012 in the case of Ajay Prakash Verma vs. ITO, Dhanbad reported in 2013(1) TMI 140 has held that interest u/s 234A and 234B can be levied only on the income declared by the assessee in the return of income. The Hon'ble Jharkhand High Court in I.A. No. 5725 of 2014 in Civil Review No. 66 of 2013 judgment dated 1st September, 2015 dismissed the civil review application filed by the department on this issue in this very case of Ajay Prakash Verma. Respectfully following the propositions

of law laid down by the jurisdictional High Court, I direct the A.O. to levy interest u/s 234A and 234B only on the income returned by the assessee and not on the income assessed by the A.O.

5. In the result, the appeal of the assessee is allowed in part.

Order Pronounced in the Open Court on 28th February, 2018.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 28/02/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Ankur Jain, C/o. M/s. Tarran Lal Tarachand, Upper Bazar, Ranchi – 834 001.
2. ITO, Ward 1(1), Ranchi.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Ranchi