IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.702/Chd/2017
(Assessment Year : 2011-12)

Sh.Simranpal Singh, Prop. M/s K.K. Enterprises, # 986/3, Dhobi Ghat, Patiala. PAN: BAPPS6785N (Appellant)	Vs.	The I.T.O., Ward 1 Patiala. (Respondent)

Appellant by : Shri Rajiv Saldi, Adv.
Respondent by : Smt.Chanderkanta, Addl.CIT

Date of hearing : 21.03.2018
Date of Pronouncement : 09.04.2018

ORDER

PER ANNAPURNA GUPTA, A.M.:

This appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals), Patiala (hereinafter referred to as ('Ld.CIT(Appeals') dated 23.02.2017 relating to assessment year 2011-12.

2. The facts relating to the case are that assessment was completed u/s 144 of the Income Tax Act, 1961(in short 'the Act') making addition on account of the following to the returned income of the assessee:

1) VAT Payable = Rs.3,21,817/-
2) Interest = Rs.27,88,028/-

Later on the same was rectified vide order passed u/s 154 of the Act, reducing the above additions to as under:

1) VAT Payable = Rs.19,425/-
2) Interest = Rs.7,92,993/-

3. Before the Ld.CIT(Appeals), the assessee challenged the framing of assessment u/s 144 of the Act and also the additions made to the income of the assessee. The Ld.CIT(Appeals) dismissed all the grounds raised by the assessee and upheld the order of the Assessing Officer.

4. Aggrieved by the same, the assessee has come up in appeal before us, raising following effective grounds:

"1. That the Ld. CIT (A) has wrongly confirmed the additions although return was filed u/s 44AD as such no further additions were called for.

2. That the Ld. A.O. framed the assessment u/s 144 and rejected the books and made other additions on the basis of same books of account.

3. That without prejudice to above the Ld. CIT (A) wrongly confirmed the addition of interest on the alleged advance to sister concern. The addition was made by the Ld. A.O. at Rs.27,88,028/-but later on (reduced u/s 154 to 7,92,993/-). Even this addition was also not called for as there was no nexus for advancement of loan against the loan raised from bank. Moreover there were sufficient funds with the appellant and also sufficient interest free loan to whom no interest was paid out of which it was advanced. This fact was clear from the balance sheet and other related documents on record.

4. That the Ld. CIT (A) had wrongly confirmed the addition on account of VAT. The addition was made Rs.3,21,817/- which was later on reduced u/s 154 by Ld. A.O. to Rs.19425/- Even this addition of Rs.l9425/- was not called for because no VAT is charged and no deduction of VAT was claimed in P&L account, as such the addition is liable to be deleted.

5. Even u s 144 also the A.O. cannot go beyond the legal provisions. If assessee is covered u/s 44 AD then even u/s 144 also the A.O. is bound to apply the provisions.

6. That the Ld. CIT (A) had not given any findings on the ground no.5 as the Ld. A.O. has taken the returned income at Rs.395970/- which was computed u/s

44AD and not taken at Rs.251306/- as shown net profit in P&L account."

5. Ground Nos.1 & 2 challenging the framing of assessment u/s 144 of the Income Tax Act, 1961 (in short 'the Act') and the rejection of books of account of the assessee were not pressed before us and are, therefore, treated as dismissed.

6. Ground Nos.3, 4, 5 & 6 raised by the assessee are against the addition made to the income of the assessee on account of interest and VAT payable.

7. Brief facts relevant to the issue are that initially notice u/s 142(1) of the Act was issued to the assessee alongwith questionnaire asking him to file ITR, copy of audited report and copy of computation of income. The assessee filed copy of return, computation of income, copy of audit report and Form No.26AS and claimed that he had filed the return on presumptive basis u/s 44AD of the Act, but despite repeated opportunities given to him was unable to bring anything on record to prove that he had filed the return. Further the assessee did not cooperate in the assessment proceedings. The AO therefore framed the assessment u/s 144 of the Act on the basis of material available with him .During assessment proceedings the AO noted that the assessee had given interest free loans of Rs.2,32,33,567/- to different parties and at the same time had taken unsecured loans amounting to Rs.49,35,688/-, paying interest thereon of Rs.7,92,993/-. The AO therefore disallowed proportionate interest relating to the interest

free advances calculating the same at RS.27,88,028/-, which was later on rectified u/s 154 to Rs.7,61,429/-

8. The AO also made addition of the VAT outstanding for payment as at the end of the year amounting to Rs.3,21,817/-for the reason that it had remained unpaid. The same was also rectified u/s 154 to Rs.19,425/-

9. The Ld.CIT(Appeals) upheld both the additions.

10. Before us, vis-à-vis the aforesaid additions made, the only contention raised by the Ld. counsel for assessee was that the Assessing Officer had made the aforesaid additions to the income returned by the assessee u/s 44AD of the Act on presumptive basis and that once the income is computed on presumptive basis as prescribed u/s 44AD, no further additions are called for to the said income in view of the non obstante clause of the said section, which debars the operation of sections 28 to 43C of the Act while computing the said income. The Ld. counsel for assessee relied upon the decision of the Coordinate Benches of the Tribunal in the case of Balaji Construction Vs. ACIT, reported in 66 TTJ 718 (ITAT Pune Bench) and Gopal Singh R. Rajpurohit Vs. ACIT, reported in 94 TTJ 865 (ITAT Ahmedabad Bench).

11. The Ld. DR, on the other hand, relied upon the order of the lower authorities.

12. We have heard the rival contentions. We find merit in the contention of the Ld. counsel for assessee. The fact that the Assessing Officer had made the impugned additions to

the income returned by the assessee u/s 44AD of the Act, has not been controverted by the Revenue before us. In fact, a perusal of the assessment order reveals that the assessee had submitted copy of its return filed alongwith computation of income, to the Assessing Officer in response to notice issued u/s 142(1) of the Act claiming that it had filed its return on presumptive basis u/s 44AD of the Act. We find that in response to the questionnaire issued to the assessee, the assessee contended that since it had filed return on presumptive basis u/s 44AD, the questionnaire was not applicable to it. Even thereafter the assessee contended vide its letter dated 18.9.2013 that it had availed the option of declaring income on presumptive basis u/s 44AD of the Act. A perusal of the computation of income, placed in the paper book at page Nos.11&12 corroborates this fact showing income returned u/s 44AD at Rs.3,95,969/-. Thereafter, we find that the Assessing Officer discussed the additions/disallowances to be made to the income of the assessee on account of interest and VAT payable and added the same to the income declared by the assessee u/s 44AD at Rs.3,95,969/-. Thus the contention of the assessee that the additions have been made to the income declared on presumptive basis u/s 44AD of the Act, are found to be correct. The Ld. DR has not brought anything before us either by way of any document or by way of any oral argument to show that the said contention of the assessee was incorrect. Having said so, we find merit in the contention of the Ld. counsel for assessee that no

addition on account of disallowances prescribed u/s 28 to 43C of the Act can be made to the income of the assessee. The presumptive manner of taxation of income as prescribed u/s 44AD of the Act precludes the applicability of provisions of sections 28 to 43C of the Act which is evident from the section itself which begins with "notwithstanding anything to the contrary contained in sections 28 to 43C". Reliance placed by the Ld. counsel for assessee on the decision of the Coordinate Bench of the Tribunal in the case of Gopal Singh R. Rajpurohit (supra) and Balaji Construction (supra) are apt wherein the said proposition has been laid down. The Hon'ble I.T.A.T. in the case of Balaji Construction (supra) has laid down the said preposition at para 7 of its order as under:

> *"7. In view of the above discussion, we are of the view that addition of Rs.1,45,930 cannot be sustained. Admittedly, the assessee is engaged in the construction activities and the total contract receipts are below Rs.40,00,000. In such situation, s. 44AD provides that profits chargeable to tax would be 8 per cent of the gross receipts paid or payable to the assessee or the higher sum declared by the assessee in the return. This section is a deeming section and it overrides the provisions of ss. 28 to 43C provided the total receipts paid or payable does not exceed Rs.40,00,000. In view of such mandatory provisions, the business income of the assessee carrying on construction activity has to be determined under s. 44AD and not in accordance with the provisions of ss. 28 to 43C. That means profits computed under s. 44AD would take care of expenditures and allowances provided in ss. 28 to 43C. From the above discussion, it is implied that legislature has recognized 92 per cent of the contract receipts on account of expenditures and allowances specified in ss. 28 to 43C irrespective of any material or evidence. Therefore, assessee cannot be asked to explain the entries of expenditure to the extent of 92 per cent of the contract receipts minus (-) the amount of statutory allowances such as depreciation. Similarly, assessee cannot claim any such statutory allowances or other expenditure against the deemed profits chargeable to tax under s. 44AD. The three amounts of Rs.5,000, Rs.1,10,000 and Rs.30,930 are much less of 92 per cent of the contract receipts. Therefore, in our opinion, no addition can be made in respect of such expenses. Accordingly, the addition of Rs.1,45,930 is hereby deleted. This would dispose of ground numbers 5,7,8,9 and 10."*

13. The same has been reiterated in the case of Gopal Singh R. Rajpurohit (supra) at para 5 of the order as under:

> *"5. I have heard the rival contentions and perused the materials available on record. I find merit in the arguments of both the parties, the legislature has intended to tax the retail traders in a presumptive manner at the rate of 5 per cent net profit on total turnover thereby the provisions of ss. 28 to 43C [including s. 40A(3)] will not be applicable. Since both the parties have agreed to make the assessment under s. 44AF(1), the AO is directed to apply 5 per cent of net profit on total turnover and thereby delete the addition made under s. 40A(3). The AO is directed accordingly, assessee's appeal is partly allowed."*

14. In view of the above, we direct the deletion of additions made to the income of the assessee on account of interest and VAT to the extent of Rs.7,92,993/- and Rs.19425/- respectively. The ground No.3,4,5 & 6 raised by the assessee are, therefore, allowed.

15. In the result, the appeal filed is partly allowed.

Order pronounced in the Open Court.

Sd/- Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 9th April, 2018

Rati
Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh