

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.235/Kol/2016
Assessment Year :2010-11

Income Tax Officer, Ward-12(2), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69	V/s.	M/s Archana Construction Pvt. Ltd., 132, Dr. Meghnad Saha Sarani, Kolkata-700029 [PAN No.AAECA 8420 F]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S. Dasgupta, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	16-05-2018
घोषणा की तारीख/Date of Pronouncement	24-05-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2010-11, is directed against Commissioner of Income Tax (Appeals)-4, Kolkata's order dated 16.12.2015 in case No.194/CIT(A)-4/Ward-12(2)/Kol/14-15, reversing the Assessing Officer's action rejecting assessee's books thereby estimating net profit @ 3% to the tune of ₹74,20,370/-, in proceedings u/s 144/145(3) of the Income Tax Act, 1961; in short as 'the Act'.

Case called twice. None appears at assessee's behest. It is therefore proceed *ex parte*.

2. Learned Departmental Representative takes us to CIT(A)'s detailed discussion deleting the impugned addition of ₹74,20,370/- (supra) made in

assessment order dated 18.03.2013 after rejecting relevant books of account as follows:-

“4.3 I have considered the entire spectrum of the matter considering both the rival contentions. The pertinent issue is considered from both the appellant as well as the Assessing Officer's perceptions. I find that the short issue at hand in the appeal on these grounds is on whether the AO was justified in applying NP @ 3% of turnover at ₹74,20,370/- or not. I find that the appellant's AR has lucidly narrated the modus operandi of the appellant's business in its explanation contained in paras I & II of its submission supra. That more than 99% of purchase is from HCL and that all the bills of purchases have been produced and all the transactions have been confirmed by HCL Ltd., in response to the notice issued in this regard. That out of total purchases of ₹24,59,07,263/- only bills of purchase of accessories of ₹2,00,920/- from M/s J.N.S. Enterprise could not be produced but even in this case the payment is through the banking channel & the company is regularly filing Sales Tax Return. The accounts of the company are regularly audited. The defects in the stock register are technical in nature and have no effect on the profit/loss of the company and this cannot be the basis to reject the accounts maintained in normal course of business. The absence of stock register itself would not justify the rejection of the books of account unless coupled with certain other factors. There was no finding to the extent that the accounts were not correct and complete or that the AO was of the opinion that the income could not be determined from the accounts maintained by the assessee. I do not find any convincing basis for the AO to estimate that the company earned net profit of 3% on the gross turnover. This is the first year of business, the company has capital of ₹23,10,000/-. The company has gross profit of ₹17,28,375/- on a turnover of ₹24,73,45,734/- and the gross profit to sales ratio comes to 0.70%. The company has taken loan from bank & other for this business. The company has to pass on the discount and incur various other expenses for the business. There is no palpable reason for the AO to estimate that the company has earned net profit @ 3% i.e. ₹74,20,372/-. The AO has only pointed out technical defects in the entry in the stock register which has also been rectified in the same year and it has no impact on the profit disclosed by the company. This cannot be the reason to reject the accounts u/s. 145(3). The books cannot be rejected on insignificant mistake as held by the Apex Court in the case of CIT vs. Padmachand – 76 ITR 719. The jurisdictional Calcutta High Court in the case of Ashoke Refractories Pvt. Ltd. vs. CIT (2005) 279 ITR 457 has also given the same view. Having regard to the entire factum of the matter and having also considered the judicial precedence in this regard as in the foregoing. I do not find any merit in the action of the AO in rejecting the books and estimating the net profit @ 3%. The action of the AO thus stands reversed and the said estimation deleted.”

3. It is vehemently argued at the Revenue's behest that the Assessing Officer had rightly rejected assessee's books on account of the fact that the relevant documentary evidence in the nature of copy of challens of mobile

purchases followed by various stock discrepancies in case of "HCL" bills had not been placed on record. Learned Departmental Representative therefore seeks to revive the impugned net profit addition made @ 3% of assessee's turnover. These Revenue's arguments fail to dispute the CIT(A)'s finding of fact that the assessee had purchased 99% of its stock items from M/s "HCL" and all of its bills of purchases alongwith confirmation during the course of assessment itself. It is further evident that the other party M/s J.N. Enterprise had sold mobile accessories of ₹2,00,920/- as per its sales tax returns. There is no cogent material before us to rebut the same. We therefore affirm the CIT(A)'s findings deleting the impugned addition made by the Assessing Officer after rejecting assessee's books. The instant sole substantive ground is declined.

4. This Revenue's appeal is dismissed.

Order pronounced in the open court 24/05/2018

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 24/05/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-12(2), Aayakar Bhawan, P-7, Chowringhee Sq. Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Archana Construction Pvt. Ltd., 132, Dr. Meghnad Saha Sarani
Kolkata-700 029
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।