

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Smt. Madhumita Roy, Judicial Member**

**I.T.A. No. 638/KOL/2015
Assessment Year: 2010-2011**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-34, Kolkata,
Aayakar Bhawan Poorva, 7th Floor,
110, Shantipally, E.M. Bye-Pass,
Kolkata-700 107***

-Vs.-

***M/s. Hindustan Windows Mfg. Co.,.....Respondent
11, Clive Row, 3rd Floor, Room No. 1,
Kolkata-700 001
[PAN: AABFH 6473 K]***

Appearances by:

*Shri Sallong Yaden, Addl. CIT, D.R., for the Appellant
Shri A.K. Tibrewal, FCA, for the Respondent*

Date of concluding the hearing : May 23, 2018
Date of pronouncing the order : May 30, 2018

O R D E R

Per Shri P.M. Jagtap, A.M. :-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 20.01.2015, whereby he reduced the income of the assessee estimated by the Assessing Officer at Rs.1,45,06,210/- to Rs.75,99,967/-.

2. The assessee in the present case is a partnership firm, which is engaged in the business of manufacturing of pre-fabricated building material. The return of income for the year under consideration was filed by it on 12.10.2010 declaring total income of Rs.42,71,133/-. During the year under consideration, a survey under section 133A was carried out in the business premises of the assessee on 09.03.2010. During the course of

survey, cash on physical verification was found at Rs.25,38,400/- as against the balance of Rs.97,92,291/- appearing in the cash book showing a difference of Rs.72,53,891/-. While explaining the said difference, the partner of the assessee-firm stated that the cash was sent to various work sites for incurring site expenses and wages which was not recorded in the cash book. Although there was no documentary evidence to show such transfer of cash to the various work sites, the site expenses of Rs.40,00,000/- and wages of Rs.12,00,000/- claimed to be incurred at various work sites from the cash transferred was taken into account by the Survey team while preparing the Profit & Loss Account of the assessee's business till the date of survey. The Profit & Loss Account so prepared reflected Net Profit of Rs.49,99,967/- on total sales of Rs.34,91,23,407/- giving a net profit rate of 1.43%. In the Profit & Loss Account filed along with the return of income for the year under consideration, the assessee, however, declared a net profit of Rs.41,60,233/- on a total turnover of Rs.48,35,40,348/- giving net profit rate of 0.86%. During the course of assessment proceedings, the assessee could not produce any documentary evidence to support and substantiate its claim of having incurred site expenses of Rs.40,00,000/- and wages of Rs.12,00,000/- out of cash transferred to the various work sites. Keeping in view the same as well as other specific defects pointed out by him in the assessment order, the Assessing Officer rejected the books of account of the assessee and proceeded to estimate the income of the assessee from the business of manufacturing of pre-fabricated building material. In this regard, he found that the net profit of the assessee for the pre-survey period as found during the course of survey was 2.92% after disallowing the entire site expenses of Rs.40,00,000/- and wages of Rs.12,00,000/- for which no supporting documentary evidence was produced by the assessee. He accordingly adopted net profit rate of 3% and by applying the same on the total turnover of the assessee of Rs.48,35,40,348/- estimated the business income of the assessee at Rs.1,45,06,210/- in the assessment completed under section 143(3)/144 of the Act vide an order dated 28.03.2013.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record including the discrepancies found during the course of survey and the defects pointed out by the Assessing Officer in the assessment order, the Id. CIT(Appeals) upheld the action of the Assessing Officer in rejecting the books of account of the assessee. He, however, reduced the business income of the assessee as estimated by the Assessing Officer at Rs.1,45,06,210/- to Rs.75,99,967/- for the following reasons given in paragraph no. 3.5 of his impugned order:-

“3.5. One more thing is clear that site expenses of Rs.40 lakh and wages of Rs.12 lakh as appearing in page 2 of the assessment order has not been fully proved as genuine. But application of 3% on Rs.48.35 crore by the AO on the implicit linking of accrued net profit of Rs.45,99,967/- on sales of Rs.34.91 crore is not correct. The appellant's offer of Rs.49,99,967/- can also be not accepted as there are no workings or full details in the assessment folder to support the appellant's claim or offer of Rs.49,99,967/-. Having regard to huge shortfall of Rs.72 lakh of cash on survey date and site and wage expenses of Rs.52 lakh there is strong basis for increasing the estimated income beyond Rs.49,99,967/-. The net profit trend of the appellant is .46% (A.Y. 08-09, Rs.44 crore of sales) and 0.28% (A.Y. 09-10, Rs.51.34 crore of sales). For the purpose of estimation for this order u/s. 246A I enhance the net profit as agreed on survey date of Rs.49,99,967/- by Rs.26 lakh which is equal to half the site expenses of Rs.40 lakh and wages of Rs.12 lakh. This has been decided keeping in view percentage of labour charge to revenue being 2.22% in assessment year 2008-09, 4.21% in assessment year 2009-10 and 2.82% as per the return for assessment year 2010-11. Thus the total income is computed at Rs.75,99,967/-, being sum of Rs.49,99,967/- and Rs.26 lacs”.

4. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

(1) *On the facts and circumstances of the case and in law, the CIT(A) erred in estimating the total income of the assessee at Rs.75,99,967/- as against income of*

Rs.1,45,06,210/- calculated by the Assessing Officer as a percentage of gross profit.

- (2) *The CIT(A) agreed with the assessing Officer that income upto the date of survey to be taken as Rs.49,99,967/-. However, for the balance period of financial year, he estimate the income at Rs.26 lakhs against expenditure for site expenses and wages to be Rs.52 lakhs. Since the assessee failed to produce proper evidence of such expenditure, the claim is not reliable and thus the CIT(AP erred in estimating the profit against unverifiable expenditure.*

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Id. D.R., when the action of the Assessing Officer in rejecting the books of account of the assessee was upheld by the Id. CIT(Appeals), he was not justified in relying on the figures reflected in the same books of account while estimating the business income of the assessee. As rightly pointed out by him, the Id. CIT(Appeals) was not correct in taking the profit of pre-survey period as worked out during the course of survey at Rs.49,99,967/- as the basis and making an addition of Rs.26 lakhs being 50% of the site expenses and wages claimed by the assessee to estimate the business income of the assessee at Rs.75,99,967/-. We find that the Id. CIT(Appeals) while making this estimate has completely ignored the post-survey period and has made his estimate on the basis of disallowance of 50% of the site expenses and wages claimed by the assessee in its books of account, the rejection of which was upheld by him. In our opinion, after rejecting the books of account of the assessee, its business income is required to be estimated independently on the basis of the relevant material available on record. In this regard, the Id. Counsel for the assessee has contended that the business income of the assessee as estimated by the Id. CIT(Appeals) at Rs.75,99,967/- is 1.57% of the total turnover of the assessee for the year under consideration of Rs.48,35,40,348/- and the same being more than the net profit rate of 1.43% as worked out during the course of survey for the pre-survey period, the income as estimated by the Id. CIT(Appeals) deserves to be

accepted being fair and reasonable. Although there is some merit in this contention of the Id. Counsel for the assessee, the same, in our opinion, cannot be fully accepted. It is worthwhile to note here that the net profit as worked out at 1.43% during the course of survey was after allowing site expenses of Rs.40,00,000/- and wages of Rs.12,00,000/- claimed to be incurred by the assessee. The assessee, however, could not produce any documentary evidence to support and substantiate its claim for the said expenses even during the course of assessment proceedings. Since the said expenses claimed by the assessee are more than 1% of the total turnover of the assessee for the year under consideration, we are of the view that the net profit as worked out during the course of survey at 1.43% is required to be suitably adjusted for the disallowance, which is warranted on account of site expenses and wages claimed by the assessee for the un-vouched and unverifiable element involved therein. In our opinion, it would be fair and reasonable to make such a disallowance at 30% keeping in view all the facts and circumstances of the case and net profit rate of 1.75% after adjustment of the said disallowance can fairly and properly be applied on the total turnover of the assessee to estimate its business income. Accordingly, we modify the impugned order of the Id. CIT(Appeals) and estimate the income of the assessee at Rs.94,61,950/-.

6. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on May 30, 2018.

**Sd/-
(Madhumita Roy)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 30th day of May, 2018

- Copies to :**
- (1) Deputy Commissioner of Income Tax,
Circle-34, Kolkata,
Aayakar Bhawan Poorva, 7th Floor,
110, Shantipally, E.M. Bye-Pass,
Kolkata-700 107**
 - (2) M/s. Hindustan Windows Mfg Co.
11, Clive Row, 3rd Floor, Room No. 1,
Kolkata-700 001**

- (3) Commissioner of Income Tax (Appeals)-10,*
- (4) Commissioner of Income Tax- ,*
- (5) The Departmental Representative*
- (6) Guard File*

By order

*Senior Private Secretary,
Head of Office/D.D.O.
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.