

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'SMD', CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 480/CHD/2018
(Assessment Year : 2008-09)

M/s D.L. Lamba & Sons,
603, Santpura, Model Town,
Yamuna Nagar.
PAN : AAefd8356L

Vs.

The JCIT,
Range, Yamuna Nagar,
Yamuna Nagar.

(Appellant)

(Respondent)

Assessee by : None
Revenue by : Shri Akhilesh Gupta, Sr.DR
Date of hearing : 27.06.2018
Date of Pronouncement : 17.07.2018

ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 02.11.2018 of CIT(A), Karnal pertaining to 2008-09 assessment year on the following grounds:

1. *That the impugned order is bad both on facts and law to the extent additions are confirmed.*
2. *That the Id. Appellate Authority has wrongly and illegally confirmed the rejection of books of accounts by the Assessing officer against the material and evidence on record.*
3. *That the Id. Appellate Authority has wrongly and illegally applied the G.P. @ 10% ignoring the written submissions and alternatively being highly excessive and arbitrary.*
4. *That the Id. Appellate Authority has wrongly and illegally made addition of interest income of Rs 1,54,578/- although net profit rate has been applied.*

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. The assessee still remained unrepresented. However, on considering the material available on record, it was considered appropriate to proceed with the present appeal ex-parte qua the assessee appellant on merits after hearing the Id. Sr.DR.

3. The record shows that the assessee is a contractor and has declared a net profit of Rs. 16,53,395/- on contract receipts of Rs. 3,05,99,180/- giving net profit rate of 5.40% which also included the interest income of Rs. 1,54,578/-. The AO considering the fact that if

the interest income is reduced then the effective profit rate would be 4.90% required the assessee to justify the same. The AO further questioned the fall in NP rate of the assessee when compared to the previous year. After considering the reply of the assessee, for the reasons set out in para 2.3 of the assessment order, the explanation was rejected. Thereafter, the AO required the assessee to justify why net profit rate @ 12% not to be applied in the light of the caselaw available in the case of Prabhat Kumar Contractor, Sirsa in ITA No. 293 of 2008 dated 14.11.2008. Considering the reply of the assessee, the AO applied rate of 10% and further made the addition of interest income shown in the return.

4. In appeal before the CIT(A), the assessee assailed the actions of the AO. Relying on M/s Yash Pal Chopra & Co., Yamuna Nagar wherein the GP rate from similar activity in 2007-08 assessment year had been estimated at 6%, it was requested that if estimation has to be done then said decision should be applied. However, the CIT(A) after extracting the written submissions on behalf of the assessee as well as the assessment order proceeded to uphold the addition holding as under :

“In the circumstances, the addition made by the AO @ 10% of N.P. is absolutely justified and I confirm the same. This ground of appeal is dismissed.”

5. The Id. Sr.DR though relies upon the order, however, in the absence of any discussion in the order was unable to state why the arguments/prayer of the assessee were rejected.

6. We have heard the submissions and perused the material on record. On a careful perusal of the same, we find that the cryptic non-speaking conclusions of the CIT(A) cannot be upheld as there is no discussion what-so-ever in the order which highlights the reasons for rejecting the submissions. As noted, the Id. Sr.DR was also unable to show how it can be said to be an order passed in accordance with law wherein the reasoning for the conclusions drawn is completely missing. He was also required to address why the arguments advanced on behalf of the assessee may not be accepted. We further find that there is no discussion on the past history of the assessee itself though a drop in the NP rate has been noticed by the AO in para 2.1. However, what was the past history of the assessee qua the issue, there is no discussion. Accordingly, in the peculiar facts and circumstances of the

case, we deem it appropriate to restore the issue back to the file of the AO with a direction to pass a speaking order in accordance with law taking into consideration the past history of the assessee itself, the AO shall also consider the applicability of decisions stated to be from similar activity pertaining to the very same period noticed in the earlier part of this order. Needless to say that the AO shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Said order was pronounced in the Open Court at the time of hearing itself.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 17.07. 2018.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

'Poonam'

Copy to:

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

Asstt. Registrar
ITAT, Chandigarh.