

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.86/RPR/2015
Assessment Year : 2010-11**

Sat Kartar Mining & Allied Services Pvt. Ltd., B-78, Shanti Nagar, Ameri Road, P.O. Bilaspur, Bilaspur (CG).	Vs.	JCIT, Range- 2, Bilaspur (CG).
PAN : AAKCS8152Q		
(Appellant)		(Respondent)

Assessee by : Shri G. S. Agrawal, CA
Department by : Shri V. B. Sargar, DR
Date of hearing : 09-08-2018
Date of pronouncement : 17-08-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 23.03.2015 of the ld. CIT(A), Bilaspur (CG) relating to assessment year 2010-11.

2. Ground of appeal nos.1 and 2 by the assessee reads as under :-

“1. That under the facts & law, the learned Commissioner of Income Tax (Appeals) erred in confirming the observation of the learned Assessing Officer that the provisions of Sec.145(3) were applicable for rejection of book results and estimating the income on the basis of turnover.

Prayed that provisions of Sec.145(3) are not applicable and book results be accepted.

2. That under the facts & law, the learned Commissioner of Income Tax (Appeals) further erred in estimating the net profit rate at 5% of the turnover as against 3.03% declared by the appellant, rejecting the explanation filed.

Prayed to accept the book results and the addition be deleted.”

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in transport business and filed its return of income on 30.09.2010 declaring total income of Rs.27,25,030/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown gross receipt from the transporting contracts at Rs.8,75,52,316/- and has shown net profit of Rs.26,27,611/- which is around 3%. This according to him is very much on the lower side and the assessee has grossly inflated his various expenses like transportation charges, Diesel & Lubricant expenses, salary & wages, repair and maintenance, etc.. The Assessing Officer asked the assessee to produce the books of account and justify the various expenses debited in profit and loss account. He also issued summons to all the transporters as per address given by the assessee. However, the requisite information in the specified Performa was neither furnished by the assessee nor any of the transporters and they were not found in the given address also as per the report of the Inspector. After considering the various details furnished by the assessee and observing that there are lots of discrepancies in books of account, the Assessing Office rejected the book results and estimated the net profit at 7% of the total contract receipt.

4. In appeal, the Id. CIT(A) while upholding the rejection of books results reduced such net profit to 5% of the turnover.

5. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. counsel for the assessee submitted that the net profit rate adopted by the Id. CIT(A) is highly arbitrary and not based on the past results. He submitted that in the immediately preceding assessment year on a total turnover of Rs.4.54 crores, the assessee had declared net profit of Rs.6.93 lakhs which comes to 1.5% and after considering the other income the net profit declared during that year was 1.8%. He submitted that in the assessment year 2008-09, the assessment order was passed u/s 143(3) and the Assessing Officer had accepted the book results with nominal addition of only Rs.70,000/-. Referring to the decision of the Raipur Bench of the Tribunal in the case of J. N. Construction vide ITA No.270/RPR/2013 order dated 16.04.2018, he submitted that the Tribunal in the said decision has allowed the appeal filed by the assessee and accepted the book results where net profit declared by the assessee before remuneration and interest to partners was shown at 1.04%. He accordingly submitted that the order of the Id. CIT(A) should be set-aside and the profit declared by the assessee be accepted.

7. The ld. DR on the other hand submitted that the ld. CIT(A) has very reasonably reduced the net profit from 7% to 5% which under the facts and circumstances of the case is justified. He submitted that when the assessee was unable to justify the various expenses claimed in the profit and loss account by producing proper bills and vouchers and the transporters to whom such transportation charge has been paid the assessee cannot claim further relief.

8. We have heard the rival arguments made by both the sides and perused the material available on record. We find the assessee in the instant case is a transport contractor and has declared net profit of Rs.26,27,611/- on the transport contract receipt of Rs.8,75,52,361/-. The net profit shown by the assessee comes to 3.03% which was rejected by the Assessing Officer on account of various defects in the books of account produced before him and the Assessing Officer estimated the net profit at 7% by rejecting the book results. We find ld. CIT(A) reduced such net profit to 5%. It is the submission ld. counsel for the assessee that in the past the Department has accepted the book results with minor disallowance for assessment year 2008-09. Further, in the immediately preceding assessment year, the assessee had shown 1.8% net profit and the same was accepted in summary assessment. It is also the submission of the ld. counsel for the assessee that in the case of J.N. Construction (supra), the

Tribunal has directed the Assessing Officer to accept the book results without any further addition where the profit shown before remuneration and interest to partners was shown at 1.04%. We find some force in the above argument of the Id. counsel for the assessee. It is an admitted fact that while estimating the net profit at 7% the Assessing Officer has not given any comparable cases. The Id. CIT(A) while directing the Assessing Officer to estimate the profit at 5% has also not given any comparable cases and distinguished the decision in the case of G.N. Construction (supra) cited before him holding that the facts of that case are different and, therefore, cannot be a comparable case. Considering the totality of the facts of the case and keeping in view the past record of the assessee, we are of the considered opinion that adoption of 3.2% net profit as against 5% net profit adopted by the Id. CIT(A) will meet the ends of justice. We hold and direct accordingly. The grounds of appeal nos.1 and 2 by the assessee are accordingly partly allowed.

9. Ground no.3 by the assessee reads as under :-

“3. That under the facts & law, the learned Commissioner of Income Tax (Appeals) further erred in confirming the disallowance of Rs.2,10,000/- U/S 40(a)(ia) rw Sec. 194I made by the learned Assessing Officer not considering the decisions of various Benches of Hon’ble Tribunals including the jurisdictional Tribunal and also rejecting the certificate similar to as referred in Sec.201(1A) – proviso.”

10. After hearing both the sides, we find the assessee has paid Rs.2,10,000/- as hiring charges to one Shri Daljeet Singh Kalara on which no TDS was deducted for which the Assessing Officer disallowed the said amount u/s 40(a)(ia) of the I.T. Act. The ld. CIT(A) upheld the action of the Assessing Officer on the ground that the assessee had liability to tax deducted at source on payment made to Shri Daljeet Singh Kalara and, therefore, on account of failure on the part of the assessee to deduct tax at source, the Assessing Officer was justified in disallowing the expenditure. It is the submission of the ld. counsel for the assessee that in view of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P.) Ltd. reported in 377 ITR 365 if the payee has declared such amount in his return of income and paid due tax thereon, no disallowance u/s 40(a)(ia) is called for. He, however, agreed that given an opportunity the assessee is in a position to furnish the details substantiating that the payee has paid the taxes due on this amount. The ld. DR while supporting the order of the ld. CIT(A) has no objection for restoring the matter to the file of the Assessing Officer with a direction to the assessee to substantiate such claim. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to

substantiate with evidence to his satisfaction that the payee has declared the amount and paid taxes due thereon. We hold and direct accordingly. The ground raised by the assessee is allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 17th August, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 17-08-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur