

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1528/Kol/2018 Assessment Year:2012-13
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Rajkumar Singhania 172, G.T. Road, Bally, Howrah-711201 [PAN No.AKTPS 1297C]	<u>बनाम /</u> V/s.	Income Tax Officer, Ward-48(3), 3, Govt. Place (West), Kolkata-001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Chirag Desai, ACA
प्रत्यर्थी की ओर से/By Respondent	Shri P. Majumder, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	25-10-2018
घोषणा की तारीख/Date of Pronouncement	31-10-2018

आदेश /O R D E R

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income-tax (Appeals)-14, Kolkata's order dated 26.04.2018 passed in case No. 29/CIT(A)-14/Wd-48(3)/2015-16 involving proceedings u/s. 144 of the Income Tax Act, 1961; in short 'the Act'.

2. I have given my thoughtful considerations to rival contentions. Case file perused. The CIT(A)'s findings under challenge affirming the Assessing Officer's action estimating the assessee's gross profit @ 1.5% read as follows:-

"3.1. As all the grounds relate to the lone effective issue of addition of Rs14,69,040, the same are considered together. The case was selected for the CASS (computer assisted selection for scrutiny) reason for examining amount of 'sundry creditors. During the course of assessment proceedings, the AO provided repeated opportunities to the appellant vide hearings notices dated 11th of December 2014, 7th of January 2015, 13th of February 2015 and 20th February 2015. As there was no compliance by the appellant to these hearings notices on various occasions, the AO proceeded to complete the assessment on ex parte basis under section 144 of the IT Act, 1961. In the absence of due compliance by the appellant to produce the books of accounts as desired by the Assessing Officer for examination of the sundry creditors, the AO gives

the following findings, "the assessee was repeatedly requested to produce books of accounts and other details so that the huge amount of creditors could be verified, the authenticity of existence of creditors, creditworthiness of the creditors could be verified. Other revenue expenditure also could not be verified in the absence of any bills, vouchers or registers." The AO thereafter, considering the minimum profit turnover ratio in the same type of business being 1.5% as against such reported ratio of 0.49% as returned by the appellant, proceeded to add a sum of Rs 14,69,040 to the total income by determining the profit at the rate of 1.5% of the turnover. Aggrieved with this the appellant is in appeal. During the appellate proceedings; it is submitted that in the succeeding year i.e., Assessment Year 2013-14, during the scrutiny proceedings, the AO accepted the profit ratio as returned by the appellant which is almost similar to that returned for the instant year under consideration. It is therefore, submitted that the addition made by re-determining the profit at a higher percentage is legally not tenable. Appellant's contentions were carefully examined from all aspects. However, I observe that there is no dispute with regard to the non-compliance on the part of the appellant before the assessing officer during the scrutiny proceedings in spite of repeated opportunities have been provided. The AO is duty bound to examine the aspect of and genuineness of sundry creditors. The onus squarely rests on the appellant to prove with verifiable evidences the identity, creditworthiness of the creditors as well as genuineness of the transaction of credit involved of the alleged creditors. The appellant, by not providing any documentary evidence or books to support its claim of creditors. As desired by the assessing officer, failed to discharge this onus abysmally. The AO, therefore, had no other go other than do an ex parte assessment under section 144 of the IT Act. I further observe that the AO was very reasonable and just in determining the profit ratio of the appellant by comparing the same in the similar line of business in other instances rather than adding the entire amount of sundry credit. With respect to the appellant's specific contention that in the succeeding year the profit percentage was accepted as returned by the appellant, I observe that in the assessment order for that year the AO has not given any findings with respect to the issues of profit ratio or the sundry creditors and the issues referred to by the AO are completely different ones. Moreover, in that year the appellant appeared before the AO and produced relevant material and hence the situation is not comparable with the instant year under consideration. It is also noteworthy to mention that the principle of res judicata is not applicable in income tax proceedings and every assessment year is an independent and self-sustaining period. In instant case, the essence of the matter is the appellant failed to discharge its onus abysmally in proving the sundry creditors which the AO forayed to examine by not providing any documents or books of accounts or any other material evidence. In view of this, the AO had no other way of correctly computing the income of the appellant rather than resorting to the ex parte assessment and adopting the profit ratio or a reasonable competitive basis, which he did, in a fair- and just manner. The appellant has not produced any counter evidences with respect to tile profit ratio adopted by the AO. Reliance by the appellant on the assessment order of the succeeding year, where the situation is completely different and the matters at hand for examination were completely distinct and different from the ones in the year under consideration, it is also actually and legally unsustainable. In view (if this, the undersigned is not inclined to interfere with the order o the AO and the same is confirmed. Appellant's grounds, therefore, fail."

3. Before me Learned Departmental Representative strongly support both the lower authorities' action re-estimating assessee's gross profit @ 1.5% instead of .5% as declared in his computation. I find that both the lower authorities have allegedly gone by a comparable instances in the relevant business of iron and scrap business. I neither find any such comparable forthcoming in assessment order nor in CIT(A)'s appellate findings. The assessee's books have also nowhere been rejected in the lower proceedings. This is not the Revenue's case that assessee's profit declared in its books have seen a decrease in the impugned assessment year vis-à-vis those in preceding assessment years. I therefore accept assessee's sole substantive ground raised in the instant appeal. This impugned addition of ₹14,69,040/- stands deleted accordingly with a rider that the same shall not be taken as a precedent in any earlier or latter assessment year in assessee's case.

4. This assessee's appeal is allowed.

Order pronounced in open court on 31/10/2018

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

Kolkata,

*Dkp/Sr.PS

दिनांक:- 31/10/2018 कोलकाता

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

1. अपीलार्थी/Appellant-Rajmumar Singhania 172, G.T.Road, Bally, Howrah-711201
2. प्रत्यर्थी/Respondent-ITO Ward-48(3), 3 Govt. Place (West), Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।