

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.327/Ind/2017**

**Assessment Year 2012-13**

Assistant Commissioner of Income Tax – 2(1), Ujjain (Appellant)	Vs.	Shri Sanjay Bagdi, 173 Alakhdham Nagar, Ujjain (Respondent )
PAN No.AHCPB6349L		

Revenue by	Shri K.G. Goyal, Sr.DR
Assessee by	S/Shri S.S. Deshpande & Bhavesh Netkar,CAs
Date of Hearing	01.11.2018
Date of Pronouncement	14.11.2018

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal is filed at the instance of Revenue pertaining to Assessment Year 2012-13 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)(in short 'Ld.CIT(A)'], Ujjain dated 06.02.2017 which is arising out of the order u/s 143(3) r.w.s. 144 of the Income Tax Act 1961(In short the 'Act') dated 9.02.2015 framed by ACIT-2(1), Ujjain.

2. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of civil construction. Income at Rs.31,34,530/- declared in the return of income submitted on 28.09.2012. The case was processed u/s 143(1)(a) of the Act dated 18.6.13. Thereafter case selected for scrutiny assessment, followed by issuance of notices u/s 143(2) and 142(1) of the Act. On the initial date of hearing, written submissions were filed along with the financial statements and thereafter none appeared on the date of hearing. Learned Assessing Officer (In short 'Ld.A.O') had no option except to frame ex-parte assessment. Ld.A.O made addition on unexplained sundry creditors at Rs.60,42,964/- as the assessee failed to submit the confirmation and other details. Addition for unexplained unsecured loan of Rs.9,48,000/- from M/s. Amt Construction and Shri Sheikh Allabakash was also made for lack of supporting documents. Also the assessee failed to produce books of accounts and other relevant details Ld.A.O rejected the book results u/s 145 of the Act and estimated income @10% of the total turnover of Rs.7,29,45,673/- thereby making addition on account of net profit at Rs.39,10,039/- after giving set off of profit shown by the assessee. Income assessed

at Rs.1,40,35,533/-.

3. Aggrieved assessee preferred appeal before Ld.CIT(A) raising three grounds for alleged three additions. However Ld.CIT(A) took a view that when the book results have been rejected and profit have been estimated then no further addition should have been made. Ld.CIT(A) further adopted 8% of net profit rate as against 10% adopted by the Ld.A.O and partly allowed assessee's appeal observing as follows;

*“Ground No.1, 2, 3:- Through these grounds of appeal the appellant has challenged the addition of Rs.60,42,964/~ on account of unexplained creditors, Rs.9,48,000/- on account of unsecured loan and Rs.39,10,039/- on account of estimation of net profit. In the case of Shri Ghanshyam Sharma, Ujjain Vs. ITO-I (1), Ujjain, the Hon'ble IT A T, Indore while deciding the ITA No.686/Ind/20 15 dated 02.02.2016, it has been held that once the income has been estimated by rejecting the books of accounts no further addition can be made. The AO has rejected the books of account of the appellant u/s. 145 of the 1. T. Act and estimated the net profit @! 0%. It has been held by various Judicial Authorities that once the books of account have been rejected, the AO is' not empowered to make any further addition. It is also to be mentioned that appellant is carrying out Civil Construction Work. In some cases the appellant is taking direct contract and in some cases the appellant is taking sub-contract from other contractors. In the appellant's own case, the same AO has adopted 8% net profit on direct contract receipts and 4% net profit on sub-contract receipts pertaining to A. Y. 2011-12 and 201 0-11. Both the above assessments*

*have been completed u/s 143(3) of the I.T. Act. It will be appropriate to adopt similar net profit in this year also in order to meet the end of the justice. During this year the appellant is in receipts and Rs.6,04,82,012/- as contract receipts.*

1. Profit @ 4% on sub contract receipts of

Rs.1,24,63,661/- - Rs.4,98,546/-

2. Profit @ 8% on other contract receipts of

Rs.6,04,82,012/- - Rs.48,38,561/-

Total Rs.53,37,107/-

*The appellant himself has shown the income at Rs.31,34,530/-. Therefore, the addition to the extent of Rs.22,02,577/- (Rs.53,37,107 – Rs.31,34,530) is confirmed. The appellant will get the relief of Rs.86,98,426/-. Therefore, the appeal of these grounds is partly allowed.”*

4. Now revenue is in appeal before the Tribunal raising following grounds of appeal;

*“ 1.Whether on the facts and in the circumstances of the case Ld.CIT(A) has erred in deleting the addition of Rs.60,42,964/- on account of unexplained creditor holding that once net profits is estimated no addition can be made, without appreciating the fact that identity of creditors and genuineness and rather of said transactions was not explained & roved by assessee.*

*2. Whether on the facts and in the circumstances of the case Ld.CIT(A) has erred in deleting the addition of Rs.9,48,000/- on account of unsecured loan holding that once net profit is estimated no additions can be made, without appreciating the fact that unsecured loan do not form part of turnover on which net profit rate has been applied and they are part of*

*balance sheet”.*

*The matter is covered under the exception as mentioned in para 8(c) of Circular 21/2015.*

5. At the outset Ld. Departmental Representative submitted that rejection of book results and assuming net profit is only confined to the treatment of trading and profit & loss account. It however cannot be applied for the items of balance sheet. In this case alleged unexplained creditor as well as unsecured loans there is no connection of these two items with the business turnover and the expenditure incurred during the year. He further submitted that Ld.CIT(A) has not given any finding of fact relating to the alleged addition for unexplained creditors and unexplained unsecured loans at Rs.60,42,964/- and Rs.9,48,000/- respectively and the same should have been examined in the light of necessary documents which should have been placed by the assessee for necessary verification.

6. Per contra Ld. Counsel for the assessee supporting the orders of Ld.CIT(A) raised no objection to the plea of the Ld. Departmental Representative that the issue is raised on merits may be set aside to the file of Ld.CIT(A) for necessary adjudication.

7. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the deletion of addition of Rs.60,42,964/- on account of unexplained sundry creditors and deletion of addition of Rs.9,48,000/- on account of unexplained unsecured loan raised at Ground No.1 & 2. Without reiterating the facts in detail as the same have been discussed earlier, we find that the assessee did not cooperate during the assessment proceedings which leadg to framing of ex-parte assessment order. Books results were rejected and net profit estimated at 10%. Addition was also made for unexplained sundry creditors at Rs.60,42,964/- and unexplained unsecured loan at Rs.9,48,000/- as the identity, genuineness and creditworthiness of these were not proved by the assessee.

8. When the matter came up before Ld.CIT(A) he took the view that when the book results have been rejected and profits have been estimated, no other addition should have been made and he also gave relief to the assessee by estimating profit at 8% as against 10% made by the Ld.A.O.

9. For better understanding of the issue before us, we would like to mention below the provisions of Section 145 of the Act.

**Section: 145.** (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessee or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

10. From the perusal of the above provisions and most specifically Sub Section 3 of Section 145 of the Act it emanates that the Assessing Officer may make best judgment assessment in the manner provided in Sub Section 144 of the Act in case he is not satisfied about the following;

(a) Correctness of completeness of the accounts of the assessee;

(b) where the method of accounting provided in Sub Section 145(1) of the Act have not been regularly followed by the assessee;

(c) Income has not been computed in accordance with the sub standards notified under sub-section 145(2) of the Act.

11. We find that in the instant appeal Ld.A.O rejected the book results and computed the net profit by applying the net profit rate of 10% on the total turnover of Rs.7,2945,673/- observing as follows;

“4. As per the audit report submitted by the assessee (col no.32), the assessee has shown contract receipts amounting to Rs.7,29,45,673/- and shown Net Profit of Rs.3384528/-, which comes out to 4.64%. The assessee was asked to produce books of accounts and other relevant details of expenses along with bills/vouchers. However, in spite of providing sufficient opportunity of being heard, the assessee failed to submit even a single bill/voucher related to the expenses claimed in P&L account. The assessee was given a show cause as to why book results should not be rejected u/s 145 of the ‘Act” and Net Profit should not be applied @10% of the ‘Act”.

Assessee did not make any submission regarding the Show Cause under Section 144 of the ‘Act’. As the assessee failed to submit the supporting bills/vouchers of expenses claimed and books of accounts, book results are rejected u/s 145 of the ‘Act’ and net @10% which comes out to Rs.72,94,567/-. The assessee has shown Net Profit amounting to Rs.33,84,528/-. Therefore difference of s.39,10,039/- (72,94,567 –

3384528) is hereby added back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the 'Act' are being initiated separately on this issue. – Addition Rs.39,10,039/-“

12. Now perusal of the finding of Ld.A.O vis-à-vis Section 145(3) of the Act referred above we find that the Ld. Assessing Officer in the instant case is not satisfied about the correctness or completeness of the accounts of the assessee. The reason for such non satisfaction was that the assessee did not produce the books of accounts before the Ld.A.O. It is not the case that the books were produced with the documents and the Ld.A.O had examined them and noticed some incorrectness and incompleteness. Rather he had no opportunity to lay his hands on the books of accounts maintained by the assessee. He only possessed the audited financial statements but as the figures mentioned in the audited financial statements could not be verified with the books of accounts he had to frame a best assessment by following the provisions of Section 144 of the Act which reads as follows:-

**144.** (1) If any person—

(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

**Provided** that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

**Provided further** that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

13. Sub-Section 1 of Section 144 gives power to the Assessing Officer to frame the best judgment of assessment after taking into account all the relevant material which he had gathered after giving opportunity to the assessee in order to compute income or loss. In

the case of the assessee the profit and loss account shows turnover of Rs.7,29,45,673/-. Ld.A.O applied the net profit rate of 10% as against 4.64% shown by the assessee under his powers under Section 144 of the Act. As far as the audited balance sheet is concerned Ld.A.O took up two figures relating to sundry creditors and unsecured loans which he deemed necessary to be examined about their identity, genuineness and creditworthiness in terms of provisions of Section 68 of the Act. The assessee did not provide any detail which paved the way to the impugned addition. Therefore after examining the details and perusal of provisions of Section 144 and 145 of the Act as well as the facts of the instant appeal, we conclude that if the Assessing Officer is not provided the books of accounts and he/she comes across the balance sheet and the profit and loss account and if case he/she decides to reject the book results then it is within the powers of the provisions of Section 144 of the Act to compute the income based on the turn over shown in the audited profit and loss and account and simultaneously Ld.A.O can also make additions with regard to the particulars provided in the balance sheet. Certainly there should not be an overlap of the addition.

14. We therefore find force in the contention of Ld. Departmental Representative that the unexplained sundry creditors and unexplained unsecured loans are not the part of Profit and loss account. By rejecting book results, profits have been estimated on the basis of turnover. But the unexplained sundry creditors and unexplained unsecured loans, which are basically credited in the books of accounts needs to be explained by the assessee else he may have to face provisions of Section 68 of the I.T Act which relates to unexplained cash creditors. Unsecured loans need not necessary be used only for the purpose of purchase as one cannot deny the possibility that the unsecured loans can be used for purchase of other assets, making investment or loans and advances but if the impugned credit comes into the books of accounts then it needs to be explained about their identity, genuineness and creditworthiness. Similar is the fact of sundry creditors which are for purchase of goods or capital assets or services. The onus to prove their genuineness completely lies on the assessee. In the instant case during the assessment proceedings assessee did not cooperate with the Assessing authority and all the queries of the Ld.A.O remain unanswered. Ld.CIT(A) did not adjudicate these two

issues of unexplained sundry creditors and unexplained unsecured loans by grossly taking a view that the profits are estimated as such no other addition is called for.

15. In view of our above discussion and in the given facts and circumstances of the case we are of the opinion that the issues of identity, genuineness and creditworthiness of the sundry creditors at Rs.60,42,964/- and unexplained unsecured loan of Rs.9,48,000/- (Rs.6,48,000/- from M/s. Amit Construction and Rs.3,00,000/- from Shri Sheikh Allabaksh) needs to be set aside to the file of Ld.CIT(A) for afresh adjudication and if necessary a remand report may be called from the Assessing Officer for verifying the facts and thereafter Ld.CIT(A) should decide as to whether the alleged amount of sundry creditors and unsecured loans are to be treated as unexplained or explained and decide accordingly. Needless to mention that proper opportunity of being heard should be provided to the assessee.

16. In the result appeal of the revenue is allowed for statistical purpose.

Sanjay Bagdi  
ITA No.327Ind/2017

The order pronounced in the open Court on 14.11.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 14 November, 2018

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore