

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 639/Del/2015  
(Assessment Year: 2010-11)

ACIT, Circle-2, Meerut	Vs.	Pioneer Fabricators (P) Ltd, B-2, Saraswati Industrial Estate, Partapur, Meerut PAN: AABCP3296R
(Appellant)		(Respondent)

Revenue by :	Shri Surender Pal, Sr. DR
Assessee by:	Shri Neeraj Jain, Adv
Date of Hearing	04/10/2018
Date of pronouncement	10/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT (A), Meerut dated 25.11.2014 for the Assessment Year 2010-11.
2. The revenue has raised the following grounds of appeal:-
  - “1. *Whether in the light of facts and circumstances of the case the Ld. CIT (A), Meerut has erred in law and facts in deleting the addition of Rs 53,27,916/- made by the A.O. on the basis of income arrived at after applying the rate of 3% on manufacturing and trading receipts and 5% on contractual receipts without appreciating the fact that the books of accounts were not produced by the assessee and relevant facts were also not brought on record by the assessee.*
  2. *Whether the Ld CIT(A) erred in law in and deleting the addition of Rs 3,54,02,430/- made by the A.O on account of difference between gross receipts from contractual work shown by the assessee and receipts as per 26AS ignoring the fact the assessee never filed a reconciliation chart of this differential amount during the course of assessment proceedings.*
3. Brief facts shows that assessee is a company engaged in business of steel fabrication, trading and contract work. Assessee filed its return of income on 6/10/2010 declaring total income of INR 9 048084/-. The assessment under section 143 (3) of the act was passed on 28/3/2013 at total income of INR 50460760/-. Certain additions were made by the AO, which was challenged by the assessee before The Commissioner Of Income Tax

Appeals, Meerut. The learned Commissioner Appeals allowed the appeal of the assessee. The additions deleted of INR 5 327916/- and of INR 3 5402430/- were under challenge before us as per grounds of appeal of the learned AO.

4. With respect to the 1<sup>st</sup> ground of appeal, it is noted that the learned assessing officer verified that assessee has shown receipt from manufacturing of INR 1 05489312/-, from trading of INR 1 81189685/- and from contract work of Rs. 116112541/-. AO noted that assessee has offered the tax at the rate of 5% on contract receipt in the last year. The assessee was asked as to why the assessment should not be completed on that basis. Assessee filed written submission and did not agree for addition at the rate of 5% of gross receipts from contract work as last year. The AO stated that as assessee has neither produced the books of accounts nor filed the bills and vouchers regarding the expenses debited in the profit and loss account and therefore he did not have any alternative, except to calculate the income of the assessee at the rate of 5% on gross receipt of contract was. The learned AO computed 3% of the profit on manufacturing and trading turnover and 5% on contract work and computed that profit comes to INR 1 4405996 whereas the assessee has declared a profit of INR 9 048084 and then made an addition of INR 5 327916/-.
5. On appeal before the learned CIT Appeal above addition was deleted. The learned CIT Appeal examined the record for assessment year 2010 – 11 wherein the books of accounts were produced before the assessing officer and also considered the letter dated 25/3/2013. Therefore he held that AO has made the wrong statement and AO has acted in a manner in which is contrary to the principles of accountancy, income tax law and natural justice. He held that assessee is a company where accounts are audited both under the provisions of the companies act and under the provisions of the income tax act. He further stated that even if the assessee has shown 5% of profit against contract receipts during the previous assessment years, It does not mean that this assessment year also the same not profit will have to be shown by the assessee. He further noted that the gross receipt of the assessee has increased from 25.01 crores to INR 40.27 crores

therefore the estimation of profit cannot be justified and therefore he deleted the addition of INR 5,327, 916/-.

6. The learned departmental representative vehemently supported the order of the learned assessing officer and stated that when in the past year the assessee has accepted profit at the rate of 5% on contractual receipts and also during the year the books of accounts were not produced by the assessee, The learned assessing officer is correct in estimating the profits of the assessee.
7. The learned authorised representative submitted a paper book wherein vide letter dated 18/3/2013 the books of accounts along with the vouchers were produced before the learned assessing officer. He further referred to letter dated 25/3/2013, wherein the detailed reasons given by the assessee for not accepting the 5% profit on the turnover. He further referred letter dated 20/3/2013 to justify the above claim. He stated that when the books of accounts are audited and produced before the learned assessing officer no defects have been pointed out by the learned assessing officer, Merely on the basis that in the past year the assessee has accepted the profit at the rate of 5% same addition cannot be made in the hands of the assessee for this year. He further relied upon the order of the learned CIT – A.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case the books of accounts were produced before the assessing officer by the aforestated letters. The learned assessing officer did not find out any dated defects in the books of accounts but merely because in the past year the assessee has accepted certain percentage of profit, learned AO has made the addition. The assessee has also shown that there is a huge increase in the turnover of the assessee during the year compared to the previous year. On these entire bases, learned CIT Appeal has deleted the addition. The learned assessing officer has not pointed out any defect in the books of accounts or has given any reason to substantiate that why the profits of the assessee should be estimated at the rate of 5%, instead of the book results shown by the assessee. The learned departmental representative also could not show us that assessee has not produced the books of accounts or the letter through which the books of accounts have been produced before the assessing

officer is not correct statement of facts. There is no such mandate given to the assessing officer to reject the books of accounts without examining them and pointing out any latent, patent and glaring defects in such books of accounts which can show that the correct profit cannot be deduced from those books of accounts. The learned AO has failed to do that exercise. In view of this we do not find any infirmity in the order of the learned CIT – A, in deleting the above addition. In the result ground number 1 of the appeal is dismissed.

9. The 2<sup>nd</sup> ground of appeal is with respect to the deletion of the addition of INR 3 5402430/- made by the assessing officer on account of difference between the gross receipt shown as per books of accounts of contractual work and the receipt as per form number 26AS. It was found that assessee has shown the gross receipt from contract work of INR 11.6,1 Crore However, as per the 26 AS the gross receipt shown by the assessee is INR 15.15 Crore thereby there is a difference of INR 3.5 crores. The assessee explained that the amount credited includes payment of interest under section 194A, tax collection at source on payment under section 194I of the act. The assessee has also shown payment receipt from Hindustan construction Ltd under the manufacturing as it includes manufacturing as per the specification and installation at the site and the tax deducted by that company is on the whole account of payment amounting to INR 2 702338/- . The assessee has shown turnover in both the head such as manufacturing and contract work. Further INR 1,165,000 of, Lloyd insulation Ltd was received during the year under consideration. But the amount relates to earlier years and it was taxed in that previous year but at the payment was made during the year, the same was disclosed in the form number 26 AS for the current year. Assessee Further explained the situation of the northern Eastern Railways and others similarly. However the learned AO rejected the explanation of the assessee as assessee has not filed any chart of the difference of the amount and did not produce the books of accounts and bills and therefore the addition of INR 3 5402430 was added. On appeal before the learned Commissioner of income tax appeals, he deleted the addition holding that the assessee has given the detail chart where the difference between form number 26AS and the books

of accounts has been reconciled. The revenue aggrieved has preferred an appeal.

10. The learned departmental representative vehemently submitted that the assessee has not submitted any consideration before the learned assessing officer and however the learned CIT – A, has deleted the whole addition based on the written submission of the assessee reproduced at page number paragraph 4.3 of his order.
11. The learned authorised representative reiterated the same facts that has been stated in para 4.3 of the order of the learned Commissioner of income tax appeals and submitted that the learned AO has miserably the amount stated in form number 26, A. S.
12. We have carefully considered the rival contention and perused the orders of the lower authorities. On reading of para number 4.3 of the order of the learned Commissioner of income tax appeals. It is apparent that the assessee has explained the party wise difference in the gross receipt shown in form number 26 AS as well as the books of accounts of the assessee. Most of the error shows that assessee has shown the trading receipt as well as the contract receipt separately whereas the buyer has shown the gross receipt as the contract receipt. The learned CIT – A, has also noted with respect to 9 parties nature of difference and same got reconciled. Therefore, he further held that the learned assessing officer has also made an error in reading the amount of gross turnover as per the statement of form number 26 AS. The learned departmental representative could not point out any infirmity in the order of the learned CIT – A, and also could not show that the figures shown by the assessee before CIT appeal based on which the reconciliation is prepared, are incorrect. Further merely the difference between form number 26As gross receipt and the gross receipt shown by the books of accounts, addition cannot be made. This must be the 1<sup>st</sup> point of trigger of investigation for finding out the nature of difference in the reasons for the difference. If such differences are properly explained either due to timing or qualitative difference, then no addition can be made. If the assessee failed to reconcile the difference, then the AO is the addition based on the facts of the case. In the present case assessee has explained the difference with respect to each of the parties. The reconciliation of the

difference has been verified by the learned CIT – A. Same was also found to be in order. The learned AO has not made any enquiry under section 133 (6) with respect to all the parties from whom the assessee has received money as a gross receipt. In absence of it, merely because there is a difference, the addition should not have been made. In view of this, we do not find any reason to interfere with the order of the learned CIT – A. Accordingly, ground number 2 of the appeal of the revenue is dismissed.

13. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 10/12/2018

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 10/12/2018

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi