

**IN THE INCOME TAX APPELLATE TRIBUNAL
(MEERUT CAMP, MEERUT)**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5867/Del./2017
(ASSESSMENT YEAR : 2013-14)**

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| Dhoom Singh C/o. Sh. Vikram Singh, VIII, & Po. Tilwara, Chhaprauli, Meerut Uttar Pradesh (PAN : AAGHA0581A) Appellant | Vs. | ITO, Baraut Respondent |
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ASSESSEE BY : Sh. V.K.Goel, Adv.
REVENUE BY : Shri M.R.Bihara, Sr.DR

Date of Hearing : 11.01.2019
Date of Order : 25.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Dhoom Singh (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 04/09/2017 passed by Ld. Commissioner of Income Tax(Appeals)-Meerut qua the Assessment Year 2013-14 on the grounds inter alia that :

1. *“That estimation of net profit @ 8% of the gross receipts by invoking provision U/s 44AD Rs. 10,22,890/- is not according to law. Because neither books of A/c rejected nor section 44AD is applicable. A.O. has considered past history of the case.*

2. *That A.O. is erred in law that Rs. 7,50,000/- can be added as unsecured loan, when A.O. has assessed the income @ 8% of the gross receipts, than no other addition can be made and Ld. CIT(A) is in error to confirmed the same.*

3. *That A.O. has added credit in bank account of Rs. 66,73,340/- as unexplained credit entries, as A.O. has estimated net profit @ 8% , no other addition can be made in the total income of the assessee and CIT(A) is in error to confirming Rs. 14,67,952/-.*

4. *That the A.O. has made addition of Rs. 3,00,000/-, however the assessee has shown Rs. 96,000/- from his account and withdrawal Rs. 72,400/- from his wife account and Rs. 48,000/- from his agriculture income. Therefore, addition of Rs. 3,00,000/- ignoring the withdrawal shown by the assessee is not correct and CIT(A) has nor justified to confirmed Rs. 60,000/-.*

5. *That the assessee has right to add, modify or delete any ground during the appeal proceeding.*

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : Assessing Officer completed the assessment u/s 143(3) of the Act by estimating the net profit @ 8% of the gross receipts by invoking provisions contained u/s 44AD of the Act and thereby made addition of Rs 10,22,890/-, without rejecting the books of accounts.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has partly allowed the same. Feeling aggrieved the assessee come up the Tribunal by way of present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The assessee by moving separate application sought to raise additional ground on the ground that from the perusal of impugned order passed by Ld. CIT(A) at page no. 4 and 5 it is not clear but appears that the Ld. CIT(A) has confirmed the addition of Rs. 44,56,338/- u/s 68 of the Act. Additional grounds sought to be raised is as under :-

“6. That the A.O. as well as CIT(A) is in error treating the difference of 26 AS Contractual receipt as income.”

6. Keeping in view the fact that the additional ground sought to raised by the assessee goes to the roots of the case as the Ld. CIT(A) has made addition of Rs. 44,55,338/- u/s 68 of the Act by noticing the difference of 26AS contractual receipt as income, the application for additional evidence is hereby allowed.

7. **Ground no. 1 :-**

The Ld. AR for the assessee contended that undisputedly AO as well as Ld. CIT(A) has made the addition of Rs 10,22,890/- by estimating the net profit rate of 8% on the total turn over of Rs. 1,27,86,122/- (1,72,42,460/- less 44,55,338/- separately considered) on failure of the assessee to produce the books of accounts, bills and vouchers by invoking provisions contained u/s 44AD of the Act.

8. However this issue is already covered in favour of the assessee in AY 2012-13 vide ITA no. 1588/Del/2017. In A.Y. 2012-13 also net profit rate of the assessee was estimated at 8% and the Co-ordinate bench of the

Tribunal after considering facts and circumstances of the case set aside this issue to the file of AO to decide afresh by providing an opportunity of being heard and in case the assessee is again unable to produce the books of accounts or other details, the income is to be determined by applying the net profit rate in view of the past history of the assessee. In these circumstances following the decision rendered by Co-ordinate bench of Tribunal in assessee's own case for A.Y. 2012-13, we set aside this issue to AO to decide afresh after providing an opportunity of being heard and in case books of account and other details are not produced by the assessee then net profit be determined keeping in view the past history of the assessee. So ground no. 1 is determined in favour of the assessee for statistical purposes.

9. **Ground no. 2 to 5 :-**

Ground no. 2 to 5 are determined against the assessee having not been pressed during the course of argument.

10. **Additional ground :**

AO as well as Ld. CIT(A) has made the addition of Rs. 44,56,338/- after noticing the P/L account wherein the contract receipt were shown at Rs. 1,72,42,460/- whereas as per Form 26AS these receipts were of Rs. 1,27,86,122/- and thereby added the difference of Rs. 44,56,338/-. It is case of the assessee that the difference of Rs. 44,56,338/- is the receipt against the supply of rodi, dust etc. from two different parties. On failure of the assessee to provide names, addresses and bank statement of the persons whom rodi, dust etc. were supplied AO made the addition u/s 68 of the Act.

11. Identical issue was come up before the Co-ordinate bench of Tribunal in assessee's own case for A.Y. 2012-13 which was set aside to the file of AO to decide afresh in accordance with law after providing

opportunity of being heard by returning following findings :-

“18. After considering the submissions of both the parties and material available on record, we are of the view that the difference in the gross receipts shown by the assessee and reflected in 26AS cannot be added in toto particularly when the AO himself applied net profit rate on the receipts shown by the assessee. We, therefore, by considering the totality of the facts are of the view that reasonable net profit rate after considering the past history of the assessee shall be applied on the difference of Rs. 3,27,850/-, if the assessee is not in a position to reconcile the said difference. Accordingly, this issue is also set aside to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.”

12. Following the decision rendered by Co-ordinate bench of Tribunal this issue is also remanded back to the AO to determine the reasonable net profit rate keeping in view the past history of the assessee on the amount of Rs. 44,55,338/- in case the assessee has failed to reconcile the difference. Consequently additional ground no. 6 is determined in favour of assessee for statistical purpose.

13. In view of what has been discussed above the present appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 25th January, 2019.

Sd/-

(N.S.SAINI)

ACCOUNTANT MEMBER

Dated : 25/01/2019

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

BR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

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| Date of dictation | 15.01.2019 |
| Date on which the typed draft is placed before the dictating Member | 16.01.2019 |
| Date on which the typed draft is placed before the Other Member | 16.01.2019 |
| Date on which the approved draft comes to the Sr. PS/PS | 25.01.2019 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 25.01.2019 |
| Date on which the fair order comes back to the Sr. PS/PS | 25.01.2019 |
| Date on which the final order is uploaded on the website of ITAT | 25.01.2019 |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |