

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.S.SAINI, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.499(Asr)/2015

Assessment Year:2010-11

Asst. CIT,
Circle-VI, Pathankot.

Vs. M/s. Walia Construction Co.,
1-R, Abrol Nagar,
Gurdaspur Road, Pathankot.
[PAN:AAAFW 1495R]

(Appellant)

(Respondent)

Appellant by: Sh. Ashwani Kalia (Ld. CA)

Respondent by: Sh. Bhawani Shankar (Ld. DR)

Date of hearing: 14.02.2019

Date of pronouncement: 14.02.2019

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Revenue Department against the order dated 30.06.2015 passed by the Ld. CIT(A)-2, Amritsar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The Revenue Department has raised the following grounds of appeal.

i) On the facts and circumstances of the case, the Ld. CIT(A)-2, Amritsar has erred in applying rate of 5% of net profit and allowing further deduction of Depreciation and salary/interest, against 9% applied by the assessing officer merely by holding that working result are better than earlier years and ITAT, Amritsar in own case of the assessee for the A.Y.2009-10 applied rate of 5% when rate of 9% reasonably applied by the

assessing officer by rejecting the accounts on various cogent reasons.

ii) The Ld. CIT(A)-2, Amritsar is not right in deleting the above addition when as per the settled law including the judgment of the SC Kanchwala Gems Vs JCIT 288 ITR 10(SC) holding that since cogent reasons were given by the A.O. for rejecting the accounts there was no reasons to take a different view and well settled that in a best judgment assessment there is always a certain degree of guesswork and it is the assessee himself who is to blame as he did not submit proper accounts.

iii) The Ld. CIT(A)-2, Amritsar erred in deleting the disallowances of Rs.11,25,110/- on account of interest free loan when assessee has paid interest to bank amounting to Rs.93,42,170/- on Rs.8,96,06,639/- or secured loan and other hand assessee has obliged its sister concerns by giving interest free loans to them with whom the assessee firm had no business exigency and no purchase/sale with them.

iv) The Ld. CIT(A)-2, Amritsar erred in deleting the addition of Rs.7,17,640/- when salary paid to lady partner not activity involved in the business as assessee could not produce evidence regarding their qualification at the time of assessment proceedings.”

3. The Revenue Department is aggrieved against the action of the Ld. CIT(A) whereby the Ld. CIT(A) directed to apply net profit rate @ 5% as against 9% applied by the Assessing Officer, deleted the disallowances of Rs.11,25,110/- on account of interest free loan and Rs.7,17,640/- claimed as salary paid to the lady partner. The Ld. DR relied upon the order passed by the Assessing Officer and while relying thereupon submitted that the Assessing Officer has rightly passed the assessment order and made the additions in accordance with law, however, the order impugned herein based on the conjectures and surmises and therefore suffers from illegality, impropriety and perversity.

4. Having heard the parties and perused the material available on record. In the instant case, the Assessing Officer made various additions i.e.

Rs.11,25,110/- on account of disallowance of interest, Rs.49,80,000/- on account of surrendered amount, Rs.4,64,711/- on account of interest on FDR, Rs.14,080/- on account of incentive from Indian Oil Corporation and amount of Rs.825/- on account of discount. On appeal, the Ld. CIT(A) reduced the net profit rate @ 5% as against 9% applied by the Assessing Officer and further deleted the disallowance of Rs.11,25,110/- which was made by the Assessing Officer while relying upon the judgment of the jurisdictional High Court in the case of CIT vs. Abhishek Industry, 286 ITR 1 (P&H) and the addition of Rs.7,17,640/- which was added in the income of the assessee by the Assessing Officer qua salary paid to the lady partners.

5. In the instant case, appeal effect of the impugned order, has already been given vide order dated 12.08.2015 by the Assessing Officer, relevant part of the same is reproduced herein below.

“Appeal Effect of the order of the Commissioner
of Income Tax (Appeals)-II, Amritsar Appeal
No.130/13-14 dated 30/06/2015:-

Assessee filed return of income declaring income of Rs.72,09,430/- on 15/10/2010. The assessee also filed revised return on 23/04/2011 at an income of Rs.72,09,430/-.The case was processed under section 143(1) on 23/02/2012 at the returned income of Rs.72,09,430/-. In this case survey under section 133A was conducted on 10/03/2010 and the assessee has surrendered an amount of Rs.50 lakhs which has duly been reflected in the Profit & Loss Accounts. The case was selected for scrutiny through CASS. The assessee’s firm is a Govt. Contractor engaged in Civil Construction. The Assessing Officer completed the assessment u/s 143(3) of the Income Tax Act,1961 on 19/03/2013 at total Income of Rs.2,31,90,370/- by applying the net profit rate of 9% on gross turnover of Rs.21,62,19,467/- after disallowance of salary paid to lady partners amounting to Rs.7,17,640/- and also made addition of Rs.11,25,110/-on account of interest free loans to its sister concerns. The assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Amritsar against the order u/s 143(3) of the Assessing Officer. The Ld. Commissioner of Income Tax (Appeals)-II, Amritsar vide order No.130/13-14 dated 30/06/2015 has partly allowed the appeal of the assessee and deleted the addition of Rs.1,08,26,112/-

by applying net profit rate of 5% on gross turnover of Rs.17,26,72,757.73 as against applied net profit rate of 9% on gross turnover 21,62,19,467/- by the Assessing Officer and further two more additions of Rs.11,25,110/- on account of interest free loan and Rs.7,17,640/-on account of salary paid to lady partner deleted. Total addition of Rs.1,26,68,862/- has been deleted by the Ld. Commissioner of Income Tax (Appeals)-II, Amritsar.

*[Charan Dass]
Assistant Commissioner of Income Tax,
Circle-VI, Pathankot*

6. Coming to the applying net profit rate of 5%, the Ld. CIT(A) observed that since the working results of the appellant for the year under appeal are much better than the earlier assessment years and moreover keeping in view the decision of Hon'ble ITAT Amritsar Bench in assessee's own case for A.Y.2009-10 vide order dated 26.03.2014 in ITA No. 361(Asr)/2013 , whereby the net profit rate of 9% on the declared turn over estimated by the AO was reduced to 5% of the contract receipts declared by the appellant. The Ld. CIT(A) while holding that since rejection of books of account of the appellant u/s 145/3 of the Act has been upheld as above for being unreliable and net profit directed to be determined by the applying net profit rate of 5% of its turn over, accordingly no further disallowance of any item of expenditure claimed in the P & L Account can be made, deleted the disallowance under hand. We find the reasoning given by the Ld. CIT(A) is justifiable, based on rule of consistency as well as on precedent of co-ordinate bench, therefore in our considered view, the Ld. CIT(A) has rightly applied the net profit rate @ 5% hence we are not inclined to interfere in this issue.

7. Coming to deletion of disallowance of interest amounting to Rs. 11,25,110/-, we observe that the Assessing Officer while making the said addition relied upon the decision of the jurisdictional High Court in the case

of CIT vs. Abhishek Industries (supra). Although the Ld. CIT also followed the said decision and justified the action of A.O., however while taking into consideration the fact that since the rejection of books of account of the appellant u/s 145(3) of the act has been upheld being unverifiable and net profit rate of 5% turnover directed to be determined, accordingly no further disallowance of any item of expenditure claimed in P&L account can be made, deleted the addition under hand. In fact the decision in CIT vs. Abhishek Industries (supra) of the jurisdictional High Court has already been over ruled by the Apex Court in the case of M/s. Hero Cycle Ltd. vs. CIT [2015] 379 ITR 347 (SC), hence in our considered view, the Ld CIT(A) rightly deleted the disallowance under consideration i.e. interest amount of Rs. 11,25,110/- and therefore we sustain deletion.

8. Now coming to the deletion of addition of Rs.7,17,640/- the Ld. CIT(A) while taking into consideration the facts that both the lady partners were actively involved in day to day running of business as they were handling the office work and supervision of the office staff and other matters relating to the administration of business and they were paid salary being the working partners and the earlier year, the same was allowed and further they have duly disclosed the amount of salary received in their returns of income and duly paid the relevant taxes thereon and filed the copies of their returns and computation of income in support of their contention. Further it was also observed by the Ld. CIT(A) that the Assessing Officer made the disallowance of Rs.7,17,640/- purely on guess work failing to examine the record and the statements of two lady partners. In our considered view that the Ld. CIT(A) while deleting the said addition, taken into peculiar facts and circumstances and acceptance of the said disallowance in the previous year by the department and therefore made the justifiable decision based on the logical reasoning, hence do not require any interference.

9. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open Court on 14.02.2019.

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:14.02.2019

/PK/ Ps.

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- (3) The CIT(A)-2, Amritsar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

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