

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.974/Ind/2016
Assessment Year: 2010-11**

Bhopal Vikas Pradhikaran, Pragati Bhawan, Press Complex, M.P. Nagar, Bhopal-462011	बनाम/ Vs.	DCIT-1(1) Bhopal
(Appellant)		(Revenue)
P.A. No.AAALB0040K		

Appellant by	Shri Ajay, K. Chhajed, Adv.
Revenue by	Smt. Ashima Gupta, CIT-DR
Date of Hearing:	18.03.2019
Date of Pronouncement:	28.03.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This is an appeal filed by the Assessee against the order of Commissioner of Income Tax(Appeals)-31, New Delhi, Camp at Bhopal dated 30/06/2016 pertaining to

assessment year 2010-11. The Assessee has raised following grounds of appeal:

“1. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in upholding and not giving finding on the method of accounting adopted by the assessee which was not Mercantile and was following only cash system of accounting.

2. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in not given any finding on the return filed by the assessee disclosing a loss at Rs. 5,53,41,624/-, plus brought forward losses of previous years as per records.

3. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in upholding the rejection of our books of accounts under section 145(3) of Income tax Act, ignoring our submissions and referred cases and explanations and not considering that the Pradhikaran is a statutory local authority and there is no mens' -rea or dishonest intentions to furnish any inaccurate particulars and also overlooking the facts, that there was no discrepancies in the books of accounts.

4. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in confirming and estimated net income of the Appellant at 8% on the gross turnover and assessing the total income at Rs.3,01,46,037/- against the returned loss of Rs. 5,53,41,624/- shown by the Appellant without considering the past history of the case. Your petitioner submits that the learned Assessing Officer should have if he was not satisfied with the position of accounts referred the matter for the Special Audit VIs 142(2A) of the Income tax Act.

5. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in upholding that books of accounts is not matching with the audited account and the genuineness of the expenditure debited could not be ascertained. Your petitioner submits that the accounts were Audited and Tax Audit was conducted and the same was submitted with the Income tax Return filed by the Appellant.

6. That looking to the facts and circumstances of the case the learned Commissioner of Income tax (A) has erred in not considering the brought forward losses position as per the records which was to be set-off against the current years income and have not given any finding on this matter.

7. That looking to the facts and circumstances of the case the ld. Commissioner of Income Tax (A) has erred in initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act when there was neither concealment nor furnishing of the inaccurate particulars of income.”

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 25.02.2013. The assessing officer while framing assessment issued a show cause notice calling upon the assessee to explain ledger entries of the expenditure under the budget 20(3), 20(9), 20(8), 25(12), 25(18), 27(8), 27(10), 33(8), 31(1), 31(2), 31(3), 31(7), 31(14), 31(15), 31(18), sub heading 3(12) sub heading, 12(3), 32(3), 12(4), 11(1), 11(2), 10(14) with Income & Expenditure account.

3. The assessing officer observed that in the submission assessee has admitted that for budget head 20(9) i.e. ISBT, the posting in the ledger is less by Rs.300, for budget head 20(8) Vedvati Yojna the posting in the ledger is in excess of Rs.51498. Similarly for budget head 20(12) there is an excess entry of Rs.19200 for budget head 27(1) there is the entry in the ledger is short by Rs.10000/-. For budget head 33(999998) and 32(16) the assessee has admitted that certain vouchers were not entered in the ledger similarly budget head 12(4) and 11(1) the amount of Rs.116464 and Rs.1886358 respectively were not entered in the ledger. For head 11(2) it is stated that there is totaling error in the

ledger. For other budget heads, the assessee had relied on the computerized print outs furnished by the CA. The assessing officer, therefore, rejected the books of accounts and proceeded to frame assessment by estimating the profit. The assessing officer adopted profit @ 8% of the gross receipts and added the same into the income of the assessee. Thereby, the assessing officer made addition of Rs. 3,01,46,037/-.

4. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions sustained addition, dismissed appeal of the assessee.

5. Against this the assessee is in appeal before this Tribunal.

6. Ground no.1, 3 & 5 are in respect of method of accounting and rejection of books of account.

7. Apropos these grounds Ld. counsel for the assessee has reiterated the submissions as made in the written submissions. The submissions of the assessee are reproduced as under:

“The assessee is a local authority and a Government of M.P. Undertaking.

1. The State Government established City/Gram Development Authorities for the expansion & development of notified cities, which also includes Bhopal. The Development Authority does the work of expansion by providing house accommodations, commercial complexes, public utility premises, play grounds, entertainment

centres, public utility centres etc. within Bhopal Municipal area. The various schemes of infrastructure development of the Government of Madhya Pradesh are implemented by this authority.

2. Bhopal Vikas Pradhikaran, Bhopal is a Statutory Authority constituted vide notification No. 3344/32176 dated 15.09.1976 under section 38 of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 by Govt. of M.P. as an apex body for planning and co-ordination of development activities in Madhya Pradesh comprising of Bhopal and its influence area with responsibilities as specified in section 49 of M.P. Nagar Tatha Gram Nivesh Adhiniya. In fulfilling the above needs the Pradhikaran Construct Houses, Flats, Commercial and Cultural premises, develop plots and sell the properties (Kindly peruse page No.1 to 7 of our paper book.).

The decisions are made as per Delegation of powers. The channel for decision making process are as follows in descending order: -

1. State Government
2. Board of Directors
3. The Chairman
4. Chief Executive Officer
5. Superintending Engineer, Chief Town Planner.
6. Executive Engineer, Officer of Special Duty, Account Officer etc.

4. Thus, the whole objective of establishing the Bhopal Vikas Pradhikaran is to promote the infrastructure development and improving the quality of life of people on No Profit No Loss basis.

However, as per the guidelines of Housing and Environment Department of Government of M.P., BDA has worked out the cost of the Residential/Commercial properties etc. The charges for its activities which are added on the cost are as per the details below:

S.No.	Particulars of charges	O/O on cost of construction
(i)	Supervision Charges	10%
(ii)	Audit, Building permissio charges & Miscellaneou	1 1/2%
(iii)	Development on the cost of Building Construction	4 1/2%
(iv)	Work charges and Contingencies if	On Actual basi

(Kindly peruse Page no. 8 of our Paper book)

We would further like' to submit that under the deposit work in the Government projects, EWS projects, Janbhagidari and some other projects there are no supervision charges and in certain other cases the supervision charges is only 4 to 5% of the deposit work.

5. It is pertinent to note that the above charges which are being charged by the authority are actually the reimbursement of the expenses incurred to some extent on account of personnel, administration and other expenses incidental to the development of such projects and no profit markup is added. As per the details submitted above, your honour will kindly appreciate that this authority is a City Development Authority which works as an organ of the State Government. It has been created for the purposes of development of city and in any case, not to generate surplus or earn profit. Thus, it is clearly a non-profit making organization. This can be very well be perused from the position of the statement of Returned! Assessed Losses at Page No.59 of our paper book where in the position of the past years are depicted which mostly are deficit.

6. For the above assessment year 2010-2011 the appellant filed its Income Tax return at a deficit of Rs. 5,53,41,624/- on 15.10.2010 and a revised return filed on 05.01.2011 showing the same deficit and in which there was a refund of Rs.13,87,607/-. The learned Assessing Authority has issued notices and fixed the case for hearing DIs 143(2) of Income Tax Act. Further, the case was attended from time to time (Kindly peruse Page no. 55 to 58 of our Paper book).

Grounds of Appeal

Ground No.1

This ground in appeal is against the Learned CIT (Appeals) upholding that the appellant is following Mercantile system of Accounting which is not correct. The Appellant is regularly following the Cash system of accounting in the past years as well as in the above subject year which have also been confirmed by the Statutory Auditor in is Tax Audit Report. Kindly peruse Page" No.35 of our Paper book which stated the said fact. The direction may be given by the Honourable members of the said fact.

Ground No.2

This ground in appeal is against the Learned CIT (Appeals) not given any finding and have upheld the order of the learned Assessing

Officer and not considering the position of the return filed by the Appellant disclosing the deficit at Rs.5,53,41,624/- as well as the correct position of brought forward losses of the earlier years as per Page no. 59 of Paper book. That the learned CIT (Appeals) has overlooked our returned position which was on the basis of Audited Accounts and the Tax Audit Report of the Statutory Auditor. Even the Auditor had neither made any qualification in the audit report nor in the notes of accounts, which may kindly be perused at Page No. 34, 53 and 54 of our paper book. It is a golden rule that True and Real Income has to be computed on the basis of books of accounts and audited accounts which the learned CIT (Appeals) have failed to do, he may be so directed.

Ground No.3, 4 & 5

As these 3 grounds are inter related and for which our arguments are submitted together.

- Rejection of our books of accounts Vis 145(3)*
- Estimating the Net Income on the gross turnover. Not considering the returned position of deficit. Not referred for special audit Vis 142(2A).*
- The allegation that the books of accounts not matching with the audited accounts and the genuineness of the expenditure debited could not be ascertained, whereas the accounts were audited and the Tax audit was conducted by an independent Chartered Accountant.*

The Learned Commissioner of Income tax (Appeals) without going into the details of facts of the matter rejected our books of accounts Vis 145(3) of the Income Tax Act, 1961. The Learned Assessing Officer ignoring our detailed submission and not considering that the Pradhikaran is a statutory local authority and there was no mens rea or dishonest intentions to furnish any inaccurate particulars, has rejected our books of accounts. In this respect as far as the discrepancies pointed out by the learned Assessing Officer and which were before the learned CIT (Appeals) who have not appreciated our position and have upheld the decision of the learned Assessing Officer. We would submit before you the details of the discrepancies in a tabular format with the complete clarification and contention of the Appellant in respect of all the discrepancies which is enclosed with this written synopsis from Page no. 1 to 5, which may kindly be perused.

That the appellant is keeping manual accounts but at the time of audit and finalization of the accounts various entries were made to rectify erroneous entries, omissions, posting in wrong heads and

other mistakes on the direction of auditor. Thus, computerized accounts were prepared on Tally software only to facilitate the audit process and identify the mistakes, which was considered by the statutory auditor to finalize audit.

It is also pertinent to note and submit that the authority has a local resident audit from the M.P. Local fund audit, by whom vouchers are vouched on day to day basis and after which they are entered in the manual books of accounts.

We would also like to submit that the appellant's cases for the past and subsequent years were under scrutiny and the orders were passed u/s 143(3). The copies of assessment order relevant to AY 2008-09, 2009-10, ~011-12 and 2012-13 are enclosed at Page no. 13 to 20 of our Paper book from which you will kindly peruse that the returned position have been accepted by the department in each of the above years.

From the above position and clarification your honour will appreciate that there is no allegation or assertion either that the accounts are materially misstated or expenses were not supported with evidence and income is not recorded as per the system followed. The discrepancies or clerical mistake which were identified during the course of audit/computerization of accounts were rectified and consequently no discrepancy had remained in the Audited Accounts, so as to be said to have any material impact on the final result in the position of accounts. The copy of the audited accounts is enclosed at Page no. 34 to 54 of our Paper book.

More so, -the appellant had brought sufficient material on record to clarify the discrepancies identified by the AO however, The revenue authorities have failed to give strong and sufficient reasons to indicate the books of accounts of the appellant are unreliable, incorrect and incomplete before rejecting the same.

Further neither the AO nor the CIT (A) has pointed out any particular item of expenditure which is not vouched. In light of the claim that the assessee has maintained proper books of account and is also in possession of all documentary evidences. to support his income and expenditure, there is no question of invoking section 145(3) and rejecting the system of accounting regularly followed by the appellant year after year. We submit the ratios of various judgements which support our position, which are enclosed with this written submission from Page no. 6 to 8.

We would also like to submit that the Ld. AO once have evoked the provisions u/s 145(3) then he should have passed the assessment order u/s 144, whereas he has passed the order u/s 143(3) of the

Income Tax Act, 1961.

In this respect it is submitted that the Ld. AO has not given a specific finding that the correct profit could not be deduced from this method. On the other hand, the Ld. AO noticed certain discrepancies which were already rectified in audit and finalization of accounts and alleged that the books of account do not depict the true picture of assessee's business and assessed income of the appellant taking 8% of the Gross receipts.

Even at the cost of repetition, it is submitted and prayed that the Ld. AO in assessment disregarded the conditions and circumstances of the Appellant and failed to appreciate that the appellant is a City Development Authority which works as an organ of the State Government. It has been created only for the purposes of development of city and to enhance the living standard of citizens of Bhopal and NOT to generate surplus or earn profit. Thus, it is clearly a non-profit making organization.

It is a well-known proposition of law that if a Revenue Officer is to make an assessment to the best of his judgement, he must not act dishonestly, or vindictively. Moreover, he must exercise his rational judgement in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he may take into consideration assessee's circumstances, his past history, his own knowledge of the previous returns and the assessments of the assessee and all other matter which he thinks would assist him in arriving at a fair and proper estimate.

However, in the current case, the Ld. AO in determining the income of the appellant applied the rate of profit at 8% of the Gross Receipts. Being a Government Development Authority, it cannot be taken at par with other construction firms or business organization that are said to be commercial profit making concerns. The learned Assessing officer has not given any comparable case for taking 8% profit for such type of authorities.”

8. On the contrary, ld. Departmental Representative (DR) supported the order of the authorities below and submitted that the assessing officer has pointed out specific defects in the books of account, therefore, the assessing officer was justified in rejecting the books of account.

9. We have heard the rival submissions and perused the material available on records and gone through the orders of the authorities below. It is noticed that the basis of rejections of the books of account and the method of accounting by the assessing officer was that the books of accounts of the assessee did not match with audited accounts and therefore, the genuineness of the expenditure could not be ascertained. The contention of the assessee is that the assessee has been following the same method and the assessing officer in other years had accepted the books results. There is no reason to adopt a different method and reject books of account, it is contention of the assessee that all the queries of AO were duly explained. This contention of the assessee is not acceptable under the facts of the present case. The AO in his order has pointed out specific defects which in our view are sufficient to reject of books of accounts. Therefore, no interference is called for in the finding of the Authorities below.

10. Now coming to the Ground No.4, Ld. counsel for the assessee reiterated the submissions as made in the written submissions. It is submitted that appellant is a Development Authority which work for execution of social

welfare housing schemes of State Government, therefore earning profit cannot be applied that the a civil contractor. The assessing officer has not brought any material on record suggesting that the assessee is earning profit @8%. It is contended that assessee is not working on commercial basis and does not exist for profit making. The authorities below failed to appreciate the fact that assessee has been undertaking the projects related to Economic Weaker Sections (EWS) projects, Janbhagidari etc. and some other projects where no supervision charges are claimed and other cases the supervision charges is only 4 to 5%. The assessee has carried out project in accordance with the guidelines of Housing and Environment Development of Government of M.P. and cost prescribed by the authorities below. Ld. counsel vehemently argued that the adopting @8% is highly excessive, and arbitrary in nature.

11. On the contrary Ld. DR oppose the submissions and submitted that the assessee is acting as a contractor, therefore the assessing officer was justified to apply 8% is done in the case of civil contractors.

12. We have heard the rival submissions and perused the material available on records. The law is well settled where the assessing officer rejects books of accounts, he is

required to estimate profit while estimating the profit, the assessing officer is not only made the estimation on the basis of material available but also examine the surrounding facts. In the present case the assessing officer has mechanically applied @ 8% treating the assessee as a civil contractor without looking into fact that the assessee has also been carrying out social welfare schemes for EWS under aegis of the government of M.P. Therefore, the profit rate as applied by the assessing officer and confirmed by the Ld. CIT(A) cannot be sustained. Looking to the facts of the case and the fact that assessee is also carrying out Social Welfare Schemes. We restrict this profit @ 4%. This ground of the assessee's appeal is partly allowed as indicated hereinabove.

13. Ground No.2 & 6 are inter connected and are related to claim of set off brought forward losses of previous years.

14. Ld. counsel for the assessee submitted that Ld. CIT(A) has not decided this issue despite the fact that a specific ground was raised.

15. Ld. Departmental Representative (DR) opposed the submissions.

16. We have heard the rival submissions and perused the material available on records. We find that before the ld.

CIT(A) this ground was raised by the assessee, however no finding is given by the ld. CIT(A). Therefore, considering the facts, we deem it proper to restore ground No.2 & 6 to the file of the ld. CIT(A) for decision a afresh. Ld. CIT(A) is hereby directed to decide this issue in accordance with law.

17. Ground No.7 is in respect of initiation of penalty u/s 271(1)(c).

18. Ld. Counsel for the assessee has not made any argument more over this ground is premature, AO has not imposed any penalty. Therefore, this ground of the assessee's appeal is dismissed.

19. In the result, the appeal of the Assessee in ITANo.974/Ind/2016 is partly allowed for statistical purposes.

Order was pronounced in the open court on 28.03.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 28/03/2019

Patel, P.S/.नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order
Assistant Registrar, Indore