

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1270/JP/2018  
निर्धारण वर्ष / Assessment Year : 2015-16

The Deputy Commissioner of Income tax, Central Circle, Kota	बनाम Vs.	M/s Dhruv Buildcon Designers Pvt. Ltd., 531, Shastri Nagar, Dadabri, Kota, Rajasthan
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD2663H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A. K. Mahala (JCIT)  
निर्धारिती की ओर से / Assessee by : Shri B. V. Maheshwari (CA)

सुनवाई की तारीख / Date of Hearing : 20/03/2019  
उदघोषणा की तारीख / Date of Pronouncement : 03/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A)-2, Udaipur dated 04.09.2018 for Assessment Year 2015-16 wherein the Revenue has taken the following grounds of appeal:

- "1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 91,29,610/- made by the AO by applying net profit rate of 8% after duly rejecting books of accounts of the assessee.*
- 2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in not upholding the rejection of books of*

*accounts made by the AO despite the fact that stock register, consumption register and site register were not produced before the AO even in the remand proceedings.*

*3. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in observing that the NP rate of the assessee for the AY 2015-16 is more than the NP rate of the assessee in immediately preceding year when the fact remained that an additional undisclosed income of Rs. 30,14,580/- was admitted by the assessee for the immediately preceding assessment year and for bringing to tax the additional undisclosed income, proceedings u/s 148 of the Income Tax were already initiated by the AO for the AY 2014-15.*

*4. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the entire addition of Rs. 91,29,160/- despite the fact that during the course of survey proceedings, additional undisclosed income of Rs. 66,69,179/- was admitted by the Director of the assessee company.”*

2. Briefly stated, the facts of the case are that the assessee filed its return of income declaring total income of Rs. 1,69,25,550/- on 29.09.2015. Thereafter a survey u/s 133A was conducted at the business premises of the assessee on 06.02.2017 and statement of Director of the assessee's company was recorded u/s 131 of the Act on 07.02.2017. During the assessment proceedings, basis such statement, a show cause was issued to the assessee company to show cause as to why undisclosed income of Rs. 69,69,179/- for the year under consideration so declared by the Director of the assessee's company during the course of survey should not be brought to tax. In response, the assessee company submitted that the return of income was filed

much before the date of survey, hence, there was no way to include the said income of Rs. 69,69,179/- in the return of income. Further, in respect of bills for purchase of material found during the course of survey, it was submitted that all these have been entered in the books of accounts. It was further submitted that in the statement so recorded, there was nothing which was mentioned about the A.Y 2015-16 but a table was prepared and in the said table the amount of Rs. 69,69,179/- was stated and that that too without any basis. It was submitted that the Director Sh. Anil Sharma is a technocrat and he does not understand about the table and signed the statement prepared by survey team. It was accordingly submitted that the statement so recorded is based on surmises, conjecture & on probability and that is not as per facts coming out of papers seized in survey and therefore, the said amount cannot be brought to case in the hands of the assessee.

3. Further, during the course of assessment proceedings, a letter was issued on 27.11.2017 to the assessee to produce its books of accounts for examination. In response, the Id. AR of the assessee company appeared on 30.11.2017 and produced cashbook, sales-purchase ledger, bill voucher files for examination. As per the AO, the assessee didn't not produce stock register, consumption register and site register for examination. It was further observed by the AO that the assessee failed to produce day to day stock register and quantitative tally reports are not maintained. Further, referring to the survey action, the Assessing Officer observed that the assessee himself offered undisclosed income before survey team on account of various discrepancies noted in books of accounts. Therefore, it was held that

the assessee has shown his income on estimation basis. The stock register has not been produced and in absence of quantitative details the correct income cannot be determined. Accordingly, the AO invoked the provisions of section 145(3) and rejected the books of accounts of the assessee. Further, looking at the discrepancy noted by the survey team and non maintenance of proper books of accounts, a flat net profit rate of 8% was applied as against 5.18% disclosed by the assessee in its return of income which has resulted in addition of Rs. 91,29,610/- in the hands of the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). In its submissions, the assessee submitted that in the course of survey, statement of the Director Sh. Anil Sharma was recorded wherein he disclosed some income but does not come up from the seized papers given on Annexure A-1 to A-7 on which basis the said income was disclosed. It was further submitted that during the course of assessment proceedings, the Assessing Officer asked for labour wages register & stock register. The labour wages register was produced & for stock register, it was stated that all the material are directly issued to the site, hence the tally of consumption mentioned in the bills recorded in books of financial accounts itself are the stock register. It was accordingly submitted that the AO thoroughly examined the books, vouchers, Bank A/c's and have not found any discrepancy in the said books. It was submitted that the Assessing Officer's view that non-maintenance of item-wise stock register was justified for rejection of books of accounts in every case, was not unacceptable, where stock accounts were maintained, and it was not known that the absence of such item-wise stock register made detection of understatement of

income impossible and in support, reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT vs. Poonam Rani (2010) 326 ITR 223 (Del.). It was further submitted that merely because assessee has admitted income during survey, proper consideration as to the merits of the addition is not ruled out. Where the assessee had surrendered some income during survey on allegation of certain discrepancies, but later retracted from the same explaining the discrepancies, there could be no addition, unless the Assessing Officer is able to prove that the accounts are not correct and complete or the method employed for such accounting does not enable him to compute the correct income as provided under section 145 of the Income Tax Act. In support, reliance was placed on decision of Hon'ble M. P High Court in case of Ramdas Jugani v. CIT (2006) 282 ITR 356 (MP). It was further submitted that even where the assessee had admitted concealed income and the accounts were even otherwise liable to be rejected, the estimate of income has to be on a reasonable basis. Admission cannot justify addition without considering further development and it was accordingly submitted that there was no basis for AO to reject the books of accounts. Regarding estimation of profits, it was submitted that the assessee has declared net profit rate of 5.18% which is better than NP rate accepted by the Revenue in the preceding assessment year 2014-15. It was further submitted that there is no basis which is provided by the Assessing Officer regarding estimation of NP rate of 8%, therefore, as per the past history of the assessee, the assessee has disclosed a better NP rate and there is no basis with the Assessing Officer to disturb the same.

5. During the course of appellate proceedings, the Id. CIT(A) called

for the remand report from the Assessing Officer regarding the stock register which has been submitted by the assessee company as an additional evidence. In his remand report, the AO has confirmed that the assessee has produced item-wise details of material inward and outward for the F.Y 2014-15 which have been examined by him. The AO has further stated in his remand report that though the AR has explained the opening quantity, purchase quantity and closing quantity from bills and also produced purchase bills for verification of item wise details of material inward and outward, however, day to day stock register and consumption register has not been produced for examination.

6. The Id. CIT(A) thereafter taking into consideration the statement of the assessee's director recorded during the course of survey, the additional evidence so submitted by the assessee, and the remand report of the Assessing Officer held that on reading of the statement recorded during the course of survey, no specific discrepancies were pointed out either during the survey, or during the assessment proceeding as far as books of account, loose papers etc found during the survey. The Id CIT(A) further held that the AO conveniently cited absence of stock register to reject the books of accounts. The assessee has produced item-wise details of material inward & outward for AY 2015-16 as additional evidence and which has been verified by the Assessing Officer. It was accordingly held by the Id CIT(A) that given the factual examination and admission by the AO during the remand proceedings, the ground to reject the books of accounts no longer exist as mere non production of day to day stock register and the consumption register cannot be sole ground to reject the books of

account and the action of the AO regarding rejection of books of accounts was not upheld. Regarding estimation of G.P rate, Id. CIT(A) referred to the NP rate of last 3 years and the NP rate @ 5.18% declared by the assessee for the year and held that the assessee has declared a better NP rate during the year and there is no basis to support a higher NP rate as estimated by the Assessing Officer NP @ 8% without any comparative case.

7. The Id. DR was heard who has relied on the findings of the Assessing Officer. The Id DR submitted that once the assessee has surrendered the income during the course of survey, the AO has rightly brought the same to tax. It was further submitted that specific discrepancies were noticed during the course of survey which has formed the basis for determining the quantum of undisclosed income for the year and for the purposes of rejection of books of accounts and estimation of net profit rate.

8. Per contra, the Id. AR supported the findings of the Id. CIT(A). It was submitted that there is no specific discrepancies which has been pointed out by the Assessing Officer, the bills marked as annexure-7 are duly recorded in the books of accounts which have been verified by the Assessing Officer and the stock is properly maintained and books are audited and the NP rate is better than previous year. There was no basis with the AO to estimate NP @ 8%. Regarding the disclosure made during the course of survey, it was submitted that there is no basis which has been stated in the statement so recorded and it was purely and total prepared by the survey team and when during the course of assessment proceedings, the assessee sought to seek the reasons, the

AO turned to stock quantitative details etc, this means that the Id. AO deviated from the amount of declaration, and picked up the other way to justify his addition, as such the declaration of any amount & consequent ground taken is nullity on the basis of assessment order.

9. Heard both the parties and perused the material available on record. The case of the Revenue is that there are deficiencies in the books of accounts as so found during the course of survey and basis the same, the declaration of undisclosed income was made by the Director of the assessee's company and which has not been honoured by the assessee company. The AO has accordingly proceeded to reject the books of accounts by invoking section 145(3) and has estimated the net profit rate. The case of the assessee is that firstly, there are no discrepancies which have been found during the course of survey and what has been found during the course of survey are certain bills which have been duly recorded in the books of accounts and further, there is no basis as to how the figure of undisclosed income of Rs 66,69,179 has been determined. It has been further submitted that the AO has examined the books of accounts during the assessment and remand proceedings and no specific discrepancies have been found in the books of accounts and hence, there is no basis for rejection of books of accounts.

10. We have gone through the statement of the Director of the assessee company recorded during the course of survey and find that the questions which have been raised relates to certain bills/vouchers/invoices relating to financial years 2013-14, 2014-15, 2015-16 and 2016-17 which have been identified by the assessee's

director. The identification of these bills/vouchers/invoices by the assessee's director means that the assessee confirms that these invoices/vouchers/bills pertain to its business activities, however the same doesn't imply that there are any discrepancies in these transactions or these are unrecorded transactions. Further, we find that there is no specific finding of the survey team that there are any discrepancies in these transactions or these are unrecorded transactions. If we look at question no. 9, referring to these bills/vouchers/invoices identified as Annexure A Exhibit 1-7, for financial year 2015-16, additional income, in addition to net profit, already declared has been determined at Rs 1,05,00,969; similarly, for financial year 2016-17, additional income, in addition to net profit, already declared has been determined at Rs 35,30,374 and undisclosed investment has been determined at Rs 49,85,049 referring to these bills/vouchers. However, for the impugned financial year 2014-15, an amount of Rs 69,69,179 has been determined as additional income in addition to net profit already declared of Rs 169,25,552 without any reference or linkage to any bills/vouchers/invoices found during the course of survey. How the said additional income has been determined by the Survey team is also not clear. Even from the perusal of the assessment order, there is nothing on record which establishes any linkage between the bills/vouchers/invoices found during the course of survey and additional income so determined by the survey team. In absence of the same, we agree with the finding of the Id CIT(A) that there are no specific discrepancies which have been pointed out by the survey team or during the assessment proceedings so far as books of accounts and bills/vouchers/invoices found during the course of survey and even the basis of determination and quantification of additional

income is also not discernable from the records.

11. Now, referring to the findings of the Assessing officer during the assessment proceedings, the Assessing officer has stated that the assessee produced cashbook, sales-purchase ledger, bill voucher files for examination, however, the assessee didn't not produce stock register, consumption register and site register for examination. It was further observed by the AO that the assessee failed to produce day to day stock register and quantitative tally reports are not maintained and accordingly, the books of accounts were rejected. During the course of appellate proceedings, the assessee produced the stock register which was subject matter of examination by the Assessing officer and the latter in his remand report has accepted that the assessee has produced item-wise details of material inward and outward for the F.Y 2014-15 which have been examined by him. The AO has further stated in his remand report that though the AR has explained the opening quantity, purchase quantity and closing quantity from bills and also produced purchase bills for verification of item wise details of material inward and outward, however, day to day stock register and consumption register has not been produced for examination. To our mind, once the stock register has been submitted for verification which contains the opening stock, purchases, and closing stock and on examination thereof, there is no discrepancy which has been found by the Assessing officer, there is no basis for rejection of books of accounts merely for non-maintenance of day-to-day register and our view is fortified by the decision of Hon'ble High Court in case of Poonam Rai (supra). We accordingly confirm the findings of the Id CIT(A) wherein he has rightly disapproved the rejection of books of accounts by the Assessing officer. Once the

books of accounts are upheld, we donot see any merit in the trading addition so made by the Assessing officer by disturbing the book results and estimating net profit rate and that too, without bringing on record any comparative cases or even examining the past history of the assessee and the fact that the assessee has declared better results than in the past years. In the result, we donot see any infirmity in the findings of the Id CIT(A) and the same is hereby confirmed.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 03/04/2019.

Sd/-

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/04/2019.

\*Ganesh Kr

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The DCIT, Kota
2. प्रत्यर्थी / The Respondent- M/s Dhruv Buildcon Designers Pvt. Ltd., Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1270/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar