

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

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 466/JP/2018
निर्धारण वर्ष / Assessment Year :2014-15

M/s Gupta K.N. Construction Co., A-34, Ganesh Nagar, Shyopur Road, Sanganer, Jaipur.	बनाम Vs.	D.C.I.T., Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADFG 4615 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Jain (Adv)
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2019
उदघोषणा की तारीख / Date of Pronouncement :22/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-3, Jaipur dated 09/02/2018 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Rival contentions have been heard and record perused. The facts in brief are that the assessee is a civil contractor, during the course of scrutiny assessment, the A.O. by pointing out certain mistakes rejected the books of account U/s 145(3) of the Act and made addition after

applying the NP rate of 11%. By the impugned order, the Id CIT(A) given partial relief by applying NP rate of 7% as against the NP rate of 6.48% declared by the assessee. Against this order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

3. It was argued by the Id AR that even in earlier years, highest NP rate accepted by the department was at 5.5%. The Id AR also placed on record a decision of the Tribunal in assessee's own case for the immediate preceding year i.e. for the A.Y. 2013-14 wherein NP rate of 5.5% was applied after following the decision of Hon'ble Jurisdictional High court in the assessee's own case passed in DBIT No. 187/2016 dated 21/11/2017.

4. On the other hand, the Id DR invited our attention to the short comings pointed out by the AO & CIT(A) in the books of account. The Id. CIT(A) observed at para 6.3 of his order that the assessee had admittedly did not produce day to day stock register, consumption register, opening and closing stock inventory. The assessee also did not produce party wise purchase details and no payment register with respect of labour payments so made by the assessee. As per the Id DR after considering all these facts, the Id. CIT(A) has already given relief by reducing NP rate from 11% to 7%.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that AO has rejected the books of account after pointing out the defects, and estimated NP rate of 11% of the contract receipts in place of 6.48% shown by assessee. By the impugned order, after considering all the aspects and the observation made by the A.O. with regard to defects in the books of account and the assessee's contention, the Id. CIT(A) reduced the NP rate @ 7% as against the declared NP rate @ 6.48% by the assessee itself. We found that in the immediately preceding year i.e. A.Y. 2013-14, the NP rate declared by the assessee was 5.95%. The Tribunal has applied the NP rate of 5.5.% by following the decision of Hon'ble Jurisdictional High Court in assessee's own case, however, during the year under consideration, the assessee itself had shown N.P. rate @ 6.48%, and when the assessee itself had shown N.P rate of 6.48%, there is no reason to apply lower N.P rate of 5.5% as applied by Tribunal in earlier year considering N.P rate of 5.95% applied by assessee itself. During the year under consideration the Id. CIT(A) after considering the defects in the books of account pointed out by the A.O., has reasonable reduced the NP rate at 7% as against the NP rate of 11% estimated by the A.O and N.P rate of 6.48% shown by assessee itself. We do not find any infirmity in the order of the Id. CIT(A) for applying the NP rate of 7%

on the total contract receipts subject to depreciation, interest to partners and remunerations paid to the partners. Hence, we uphold the order of the Id. CIT(A) on this ground.

6. The next grievance of the assessee relate to disallowing third party interest from net profit determined by applying net profit theory.

7. We have considered the rival contentions and found that this issue is squarely covered by the decision of this Tribunal in assessee's own case for the A.Y. 2013-14 wherein third-party interest was allowed. Respectfully following the order of the Tribunal in assessee's own case, we do not find any justification for not allowing third party interest from the net profit by applying net profit theory. Respectfully following the same, we direct the A.O. to allow third party interest from the net profit determined by applying net profit theory. We direct accordingly.

8. The next issue raised by the assessee with regard to treatment of FDR interest as income from other sources in place of business income. For this purpose, the Id AR of the assessee has relied on the decision of Hon'ble Rajasthan High Court in the case of M/s Choudhary & Brothers Vs DCIT in DBIT No. 356/2017.

9. We have considered the rival contentions and found that in the case of M/s Choudhary & Brothers, the assessee was required to provide

bank guarantee in respect of civil contracts allotted to it by furnishing bank guarantee in the form of bank deposit. Thus, there was a business compulsion and by considering the same the Hon'ble High Court held that the interest income was assessable under the head business income rather than the income from other sources. However, the facts in the instant case are quite distinguishable in so far as no where the Id AR has pointed out that any such bank guarantee given by the assessee in respect of civil contract so executed during the year under consideration. Accordingly, we do not find any infirmity in the order of the Id. CIT(A) for treating the interest from FDR as income from other sources.

10. The other grounds of the assessee's appeal were not pressed by the Id AR, therefore, the same are dismissed in limine as not pressed.

11. In the result, appeal of the assessee is allowed in part in terms indicated hereinabove.

Order pronounced in the open court on 22...April, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 22 April, 2019

***Ranjan**

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

1. अपीलार्थी / The Appellant- M/s Gupta K.N. Construction Co., Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-7, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 466/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar