

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, KOLKATA**

Before Sri J. Sudhakar Reddy, Accountant Member

I.T.A. No.2361/Kol/2018
Assessment Year: 2010-11

Dey Enterprise.....Appellant
[PAN :AACFD 3344 C]

ACIT, Circle-46, Kolkata.....Respondent

Appearances by:

Shri Ranjan Banerjee, Advocate, appeared on behalf of the Appellant.

Shri Robin Choudhury, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : March 14, 2019

Date of pronouncing the order : April 30, 2019

ORDER

Per J. Sudhakar Reddy :-

This appeal by the assessee directed against the order of the Id. Commissioner of Income Tax (Appeals) - 14, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dated 27.08.2018 for Assessment Year 2010-11.

2. The assessee is a partnership firm and is engaged in the business of undertaking contracts. It filed its return of income electronically on 30.09.2010 declaring total income of Rs.7,14,401/-. The Assessing Officer completed the assessment u/s 143(3) on 22.03.2013 determining total income at Rs.26,58,401/-, inter alia, making an addition on account of disallowance of labour charges of Rs.19,44,000/-. The reasons given by the Assessing Officer for this disallowance of the labour charges is that there is an increase in the percentage of labour charges claimed by 117% in the last year. He treated 12% of the gross charges as excess on ad hoc basis.

3. On appeal, the Id. First Appellate Authority came to the conclusion that though the job contracts receipts had also increased during the year, the corresponding expenditure incurred claimed is a greater percentage of increase, as compared to the

percentage of expenditure incurred in the previous year vis-a-vis the turnover. The Id. CIT(A) called for the remand report and thereafter confirmed the findings of the Id. A.O. He rejected the contention of the assessee that, as the books of accounts were not rejected, the A.O could not have disallowed certain percentage of payments that have been certified by the auditor.

4. Aggrieved, the assessee is in appeal before us. The Id. Counsel for the assessee submits that in the previous year only 1% of the total purchases were disallowed. He relied on the decision of the Hon'ble High Court of Patna in the case of *Dhananjay Kumar Singh & Ors. vs. ACIT; (2018) 303 CTR(Pat) 413* for the proposition that "*It is a cardinal principle of law that if relevant materials and objections are produced before a quasi judicial authority, the quasi judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons.*" He also filed a note giving percentage of profit declared in the various years, as well as the percentage of expenditure incurred for the labour charges each year to demonstrate that the claim, during the current year is not examine. The Id. Departmental Representative opposed this contention and submitted that the percentage of profit declared by the assessee as a percentage of turnover after partners' salaries is 6.3% only, which is highly unreasonable. He relied on the order of the authorities below and submitted that the same be upheld.

5. After hearing the rival submissions, I find that this is a case of estimation of expenditure. The Percentage of profits declared and Percentage of labour charges claimed in the earlier years is as follows:

Assessment Year	Turnover	Labour charges	Percentage of labour charges	Profit percentage declared
2008-09	67,42,299.00	33,62,507.00	49.87%	8%
2009-10	87,43,928.00	14,95,060.00	17%	8%
2010-11	1,62,85,807.00	60,19,299.00	37%	8.05%
2011-12	1,73,21,893.00	43,10,824.00	25%	8.07%
2012-13	2,39,67,105.00	84,84,344.00	36%	7.03%

5.1 The Id. DR has not controverted these facts. A perusal of the same demonstrates that the profits declared by the assessee are reasonable. The objection of the Id. DR is that if the partners' salary are considered then the percentage of profit

declared would come to 6.3%. This argument is not acceptable for the reason that even u/s 44AD of the Act, the percentage of profit is fixed at 8% prior to deduction of partners' salary. Keeping in view the above statistics, I have no hesitation in deleting the addition and allowing the appeal of the assessee as the profit declared is fair and reasonable as confirmed with that declared and accepted by Revenue in the earlier years.

6. In the result, the appeal of the assessee is allowed.

Kolkata, the 30th April, 2019.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 30.04.2019

RS(Sr.PS)

Copy of the order forwarded to:

1. ***Dey Enterprise, Vill: West-Santinagar, P.O-Anandanagar, P.O-Bally, Howrah-711227.***
2. ***ACIT, Circle-46, Kolkata.***
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Assistant Registrar , Kolkata Benches