

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4863/MUM/2017
Assessment Year: 2011-12**

The ITO 20(2)(2), 2 nd Floor, R. No. 212, Piramal Chambers, Lalbaug, Parel, Mumbai	Vs.	Shri Kripalsingh Gulabsingh Rawat, A-506, 5 th Floor, Vithal Vinayak Sadari, T.I Road, Opp. Swan Mills, Sewree, Mumbai - 400015 PAN: ABBPR0245C
(Appellant)		(Respondent)

Revenue by : Shri Mahavir Singh (DR)

Assessee by : Shri Satish R. Mody (AR)

Date of Hearing: 09/01/2019
Date of Pronouncement: 05/04/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been preferred by the revenue against the order dated 23.03.2017 passed by the Commissioner of Income Tax (Appeals)-32 (for short 'the CIT (A)'), Mumbai, pertaining to the assessment year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 144 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that since the assessee had not filed his return of income for the assessment year under consideration, the AO issued notice u/s 143 (2) and 142 (1). However, the notices were received back un-served with the remarks 'left'. Notice u/s 142 (1) was again issued in response to which the assessee sought adjournment. Thereafter, notices were issued two/three times, however no response was received from the assessee.

Accordingly, a show cause notice was issued on 07.03.2014 along with notice under section 142(1) of the Act, again the assessee did not respond. Accordingly, the AO passed assessment order u/s 144 of the Act and determined the total income of the assessee at Rs. 2,03,91,680/-.

3. It was noticed from the AIR information that assessee had purchased immovable properties for Rs. 50 lacs in the month of October, 2010. Since, no explanation was received about the nature of source of investment, AO treated the said amount as undisclosed investment the assessee u/s 69 of the Act. As per 26AS details assessee had received income of Rs. 1,56,27,118.58 on account of interest, contract receipts and rent etc. Since, the assessee had not furnished any detail regarding the income received by way of unaccounted contractual receipts amounting to Rs. 1,48,19,078.58, the AO treated the said amount as business income of the assessee. Similarly, as per 26AS, the assessee had received income from rent amounting to Rs. 7,84,800/- and had not produced any evidence, the AO treated the said amount as income from house property. Further since the assessee had received an income of Rs. 23,240/- as interest, the AO also treated the said amount as income of the assessee from other sources. The assessee challenged the assessment order before the Ld. CIT (A) *inter alia* on the ground that the assessment order passed u/s 144 of the Act is bad in law and the AO has wrongly treated the entire receipt of Rs. 1,48,19,079/- as business income and the action of AO in treating Rs. 50 lacs as unexplained investment u/s 69 of the Act. The Ld.CIT (A) partly allowed the appeal of the assessee, however confirmed the addition of Rs. 4,39,931/- i.e. 3.83% of the total amount of contractual receipts holding that the GP of 3.83% is more than the GP shown by the assessee in the last year. The revenue is in appeal against the said findings of the Ld. CIT(A)

4. The revenue has challenged the impugned order passed by the Ld.CIT (A) by raising the following effective ground:

“On the facts and in the circumstances of the case ad in law, the Ld. CIT (A) erred in restricting the addition made on the receipt of contract receipts to Rs. 4,39,931/- to the extent of G.P 3.83% as against Rs. 1,48,19,079/- without appreciating the fact that assessee did not submit documentary evidences the regards to expenses related to the contract receipts and further, audited books of account was also not submitted before the assessing officer.”

5. Before us, the Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has wrongly restricted the addition to 3.83% of GP shown by the assessee without appreciating the fact that the assessee did not submit any evidence to establish the expenses related to the contract receipts and that the assessee did not submit the books of account before the Assessing Officer. The Ld. DR further submitted that since the order passed by the Ld. CIT (A) is not based on any evidence on record, the same is liable to be set aside.

6. On the other hand, the Ld. counsel for the assessee submitted that since the Ld. CIT (A) has confirmed the addition of Rs. 4,39,931/- which is 3.83% as against the entire amount of receipt, there is no infirmity in the order passed by the Ld. CIT (A). The Ld. counsel further pointed out the GP in the case of assessee for the previous year was 0.21% in the books of account as against the GP shown in the assessment year under consideration.

7. We have heard the rival submissions and also perused the material on record in the light of the rival contention of the parties. The only grievance of the revenue is that the Ld. CIT (A) has wrongly restricted the addition to the extent of GP of 3.83% shown by the assessee in its books of account. We notice that the AO has made the addition of entire receipt as business income of the assessee. Although the assessee has not adduced any evidence to prove the expenditure in the business yet 100% addition is not justified as the entire receipts cannot be the taxable income of the assessee. Therefore, the AO should have followed certain parameters to ascertain profit in order to make

addition to the income of the assessee. On the other hand, the Ld. CIT (A) has restricted the addition to 3.83% holding that the GP shown by the assessee in the assessment year under consideration is much higher than the GP of 0.21% shown by the assessee in previous assessment year. The findings of the Ld CIT (A) are as under:-

“5.2 Ground No. 2: This ground of appeal is against the addition of entire contractual receipts of Rs. 1,48,19,079/-. The appellant is a labour contractor and received contractual receipt during the year under consideration. The entire receipts have been treated as unaccounted receipts under the head consideration. The entire receipts have been treated as uncontrolled receipts under the head Business Income by the A.O. However, out of the total receipts of Rs. 1,48,19,079/-, contractual receipt from Calax Chemicals & Pharmaceuticals Ltd. of Rs. 31,32,127/-, is inadvertently filed in the TDS return with the PAN Number of the Appellant instead of another party having same name i.e. S.S. Enterprises having PAN number AHWPK3832H and I found that the appellant had approached the deductor i.e. Calax Chemicals & Pharmaceuticals Ltd. for rectification in TDS return the copy of the said letter also is produced before me. Few copies of the bill of the actual contractor is also obtained from the deductor in support of Appellants contention which are placed on record. As this is an obvious inadvertent mistake, the A.O. can give credit to the same. Further, the AO had considered service tax amount of Rs. 3,09,739/- in the total turnover, however assessee has accounted this amount under the Duties & Taxes which is not his Gross turnover, therefore, the actual contractual business receipts as per Appellants books of account is Rs. 1,14,82,503/-.

Before me the appellant had furnished copy of previous assessment order passed by the A.O. in which GP is shown at 0.21% in his audited books of account. For the F.Y. under consideration the GP is shown 3.83% which is more than the previous A.Y. The A.O. had considered the entire contract receipts as income of the appellant for this A.Y. without

considering the expenditure incurred by the appellant. Therefore, I restrict this to Rs. 43,9931/- offered by appellant in his computation of income filed before me which comes to at 3.83% of the gross receipts, following previous years return of income filed before the department. This ground is partly allowed.”

8. We notice that the findings of the Ld. CIT (A) are based on the GP shown by the assessee in the assessment year under consideration. We further notice that in the previous assessment order, the AO has admitted GP at 0.21% shown by the assessee in audited books of account and in the assessment year under consideration, the assessee has shown higher GP at 3.83%. Under these circumstances, the action of the Ld. CIT(A) appears to be more logical. However, since the assessee has failed to adduce any evidence to justify the business expenditure in the assessment year under consideration, either during assessment proceedings or even during appellate proceedings, we consider it appropriate confirm the addition to extent of 6% of the total receipts in question. Hence, in the interest of justice we modify the order passed by the Ld. CIT(A) and confirm the addition to the extent of 6% of the total amount of contractual receipts. Accordingly, we direct the AO to make addition of 6% of the total amount received by the assessee during the previous year.

In the result, appeal filed by the revenue for assessment year 2011-12 is partly allowed.

Order pronounced in the open court on 5th April, 2019.

Sd/-

(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 05/04/2019

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**