

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2348/Del/2015
Assessment Year : 2010-11

Shri Ashok Kapoor,
964, 2nd Floor,
Dr. Mukherjee Nagar,
Delhi – 110 009.
PAN : AEFPK4458P.

(Appellant)

Vs. Deputy Commissioner of
Income Tax,
Central Circle-07,
(erstwhile Central Circle-12),
ARA Centre, Jhandewalan Extn.,
New Delhi – 110 055.

(Respondent)

Appellant by : Shri D.C. Aggarwal, Advocate.
Respondent by : Shri Amit Katoch, Senior DR.

Date of hearing : 28.05.2019
Date of pronouncement : 29.05.2019

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the assessee for the assessment year 2010-11 is directed against the order of learned CIT(A)-24, New Delhi dated 24th March, 2015.

2. At the time of hearing before us, it is stated by the learned counsel that in this appeal, there are only two main grounds, the first one with regard to estimation of income from house property and the second is estimation of income from business or profession.

3. With regard to the first issue, he stated that for the year under consideration, the assessee has shown income from house property at 964, Dr. Mukherjee Nagar, Delhi at ₹3,50,000/-. The Assessing Officer estimated the ALV at ₹12,00,000/- without any basis or justification. He filed a chart showing that the ALV of the same property was

accepted at ₹3,60,000/- in the preceding as well as subsequent year, as under :-

S.No.	Assessment year	ALV declared	Income from house property declared on the basis of ALV	Income from house property assessed
1	2007-08	3,36,000	1,50,309	1,50,309
2	2008-09	3,60,000	1,83,922	1,83,922
3	2009-10	3,60,000	1,75,517	1,75,517
4	2010-11	3,50,000	2,35,997	8,30,957
5	2011-12	3,60,000	2,34,641	**
6	2012-13	3,00,000	1,96,643	**

He stated that except for the year under consideration, the income disclosed by the assessee has been accepted.

4. Learned Senior DR, on the other hand, relied upon the orders of the authorities below.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. From a perusal of the assessment order, we find that the Assessing Officer has not given any reason for estimating the ALV at ₹12,00,000/- as against ₹3,50,000/- disclosed by the assessee. However, from the chart furnished by the assessee, we find that in the preceding two assessment years as well as immediately succeeding assessment year, the assessee himself has disclosed the ALV of the same property at ₹3,60,000/-. When the ALV of the property was ₹3,60,000/- in the immediately preceding years as well as subsequent year, there cannot be any justification for taking the same at ₹12,00,000/-. In view of the above, we direct that the ALV of the said property for the year under consideration would be taken at ₹3,60,000/-.

6. With regard to the second issue i.e., the estimation of income from house property, learned counsel for the assessee stated that this issue is covered by the decision of ITAT in the preceding years i.e. assessment years 2007-08 to 2009-10. The facts of the year under consideration are similar i.e., in the earlier years also, the Assessing Officer had estimated the gross profit at 8% similar to the estimation of gross profit of the year under consideration. Learned CIT(A) has stated that as per contract, the assessee is entitled to gross profit of 2% only and from that gross profit, the expenditure debited in the profit & loss account is to be allowed. This finding of learned CIT(A) was accepted by the ITAT. He stated that same are the facts in the year under consideration and therefore, the order of the ITAT in the earlier years would be squarely applicable. He further submitted that out of the total receipt of more than ₹22 crores, part of the receipt is pertaining to the preceding years and the income from that receipt has already been booked in the earlier years when the goods were actually supplied.

7. Learned DR, on the other hand, relied upon the orders of authorities below.

8. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that identical issue has been considered by the ITAT in assessee's own case for assessment year 2007-08 to 2009-10, wherein vide order dated 24th January, 2014 in ITA No.2035 to 2037/Del/2012, it was held as under :-

"14. On merits also we find that Assessing Officer has not considered the expenses incurred by the assessee for earning of 2% of gross income and Id.CIT(A) has rightly agreed with the submissions of assessee and has rightly held that necessary business expenditure has to be allowed in the case of any assessee. We further find that if the Assessing Officer was to estimate the income of assessee in the absence of production of books of accounts he could have taken guidance from the provisions of section 44AD of the Act which states that a sum equal to

8% of total turnover or gross receipts of the assessee can be taken as the profits earned by an assessee engaged in the eligible business of construction and in the present cases the gross receipts are the amounts received by the assessee being an amount equal to 2%. As per the notes attached with balance sheet as relied upon by Assessing Officer, the assessee was to get 2% for providing various services such as procurement of material and construction activities on behalf of contractee, therefore, 2% represents the gross income of assessee and necessary expenditure has to be allowed out of this gross amount for arriving at net income. Therefore, on merits also, we do not see any infirmity in the order of Ld.CIT(A). Therefore, the appeals filed by the revenue are dismissed."

9. Since the facts in the year under consideration are identical, we set aside the orders of authorities below on this point and restore the matter to the file of the Assessing Officer and direct him to adjudicate the issue in the light of the direction of the ITAT in earlier years. The learned counsel for the assessee had further submitted that the income from part of the receipt in this year had already been offered for tax in the earlier year and assessed as such. We direct the assessee to make this claim along with necessary evidence before the Assessing Officer. If the assessee makes such claim before the Assessing Officer, he will consider the same and adjudicate in accordance with law. Needless to mention that Assessing Officer will afford sufficient opportunity of being heard to the assessee while giving effect to this order.

10. In the result, the appeal of the assessee is deemed to be allowed as above.

Decision pronounced in the open Court on 29th May, 2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 29.05.2019
VK.

Copy forwarded to: -

1. Appellant : Shri Ashok Kapoor,
964, 2nd Floor, Dr. Mukherjee Nagar,
Delhi – 110 009.
2. Respondent : Deputy Commissioner of Income Tax,
Central Circle-07, (erstwhile Central Circle-12),
ARA Centre, Jhandewalan Extn.,
New Delhi – 110 055.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar