

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2309/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. N. H. Saluji,
274A, Sardar Bazar, Bhingar,
Ahmednagar – 414002

PAN : AACFN7293A

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pratik Sandbhor
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 11-07-2019

घोषणा की तारीख / Date of Pronouncement : 04-09-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-2, Pune dated 11-07-2016 for the assessment year 2011-12.

2. The brief facts of the case as emanating from the records are : The assessee is a partnership firm engaged in the business of Civil Construction and mainly undertaking contracts for Military Engineering Services (MES) and Central Public Works Department (CPWD). A survey action u/s. 133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the case of assessee. During survey proceedings, the assessee made declaration of Rs.75 lakhs. The assessee filed return of income for the assessment year 2011-12 declaring total income of Rs.53,46,347/-. In scrutiny assessment proceedings, the Assessing Officer observed that despite repeated notices the assessee failed to produce books of account and also the assessee has failed to offer additional income declared during survey action. Thus, the Assessing Officer rejected assessee's books of account and estimated net profit @ 2% of the total turnover. The Assessing Officer further added the income declared by the assessee during survey action.

Aggrieved against the assessment order dated 28-02-2014 passed u/s. 144 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). During First Appellate proceedings the assessee vehemently opposed the action of Assessing Officer in rejecting books of account and objected to the observations of Assessing Officer regarding assessee's non-production of books. The Commissioner of Income Tax (Appeals) sought remand report on the contentions raised by the assessee. After considering the remand report the Commissioner of Income Tax (Appeals) dismissed the appeal of assessee in toto. Hence, the present appeal. The assessee in appeal has raised following grounds/additional ground of appeal. The same are reproduced here-in-below :

- “1. The learned CIT(A) erred in law and on facts in confirming action of learned AO in assessing income at Rs.91,44,028/- as against Rs.53,47,347/-.
2. The learned CIT(A) erred in law and on facts in confirming rejection of books of accounts and estimation of net profit at 2% of the turnover. Learned CIT (A) failed to appreciate that books of accounts were produced before the learned AO and the income offered in the return of income was fully supported.
3. The learned CIT(A) erred in law and on facts in confirming addition of Rs.75,00,000/- on account of disclosure made at the time of survey action u/s. 133A separately which has been included in the Trading and Profit and Loss Account.
4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”

Additional Ground

“On the facts and in the circumstances of the case the Assessing Officer has grossly erred in not allowing the deduction in respect of remuneration and interest on capital paid to the partners by failing to appreciate that the income declared in course of survey is business income and forms part of books profits u/s. 40b.”

3. Shri Pratik Sandbhor appearing on behalf of the assessee stated at the Bar that if additional ground of appeal is adjudicated in favour of the assessee, the assessee would not press the other grounds raised in the appeal. The ld. AR submitted that the assessee had produced complete set of audited books before the Assessing Officer. However, the Assessing Officer refused to consider the same. The assessee had made a categorical assertion before the Commissioner of Income Tax (Appeals) regarding submissions of audited books during assessment proceedings but the Commissioner of Income Tax (Appeals) also failed to appreciate the submissions of assessee.

3.1 The ld. AR confining his contention on the additional ground raised in the appeal submitted that the authorities below have failed to appreciate the fact that the deduction in respect of remuneration and interest on capital paid to the partners is allowable expenditure and has deducted while computing business income of the assessee firm. The ld. AR in support of his contentions placed reliance on the decision of Hon'ble Bombay High Court of Nagpur Bench in the case of M/s. Bagdi Enterprises Vs. Income Tax Officer in Income Tax Appeal No. 80 of 2003 decided on 12-06-2017.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the impugned order. The ld. DR submitted that the assessee made declaration of Rs.75 lakhs during survey action. In the statement recorded during survey the assessee had categorically stated that the income declared is over and above the regular income. The assessee thereafter, retracted from his statement made and tried to portray income declared during survey action as part of regular books maintained by the assessee. The assessee was non-cooperative and did not produce books of account during assessment proceedings and hence the Assessing Officer was constrained to pass the assessment order after invoking the provisions of section 144 of the Act.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has restricted his arguments only in respect of additional ground relating to assessee's claim of deduction in respect of remuneration and

interest paid to the partners while computing business income. A perusal of impugned order shows that primarily there was a dispute between Revenue and assessee with respect to authenticity of assessee's books of account. The Assessing Officer made assessment after invoking the provisions of section 14A on the ground that the assessee has failed to produce books of account. On the contrary the assessee has vehemently objected to the observations of Assessing Officer regarding assessee's non-production of books. As per the assessee the books of assessee are subject to audit under the provisions of section 44AB and the same were produced before the Assessing Officer. The ld. AR submitted before us that the books of assessee are duly audited and were always available before the lower authorities.

6. The ld. AR of assessee has made limited prayer before us to consider allowability of remuneration and interest on capital paid to the partners from the business income. Taking into consideration entirety of facts we are of consider view that the issue raised by the assessee in additional ground of appeal deserves to be restored to the file of Assessing Officer for consideration afresh. In so far as allowability of remuneration and interest paid on partners capital there is no doubt that the aforesaid expenditure are allowable while determining the business income of partnership firm. The Assessing Officer shall decide the issue afresh after considering the relevant material and affording reasonable opportunity of hearing to the assessee, in accordance with law. Thus, in view of limited prayer made by the ld. AR of assessee, the additional ground of appeal is allowed for statistical purpose.

7. The ld. AR has not made any submissions in respect of ground Nos. 1 to 4 of the appeal. Accordingly, the same are dismissed as such.

8. In the result, the appeal of assessee is partly allowed for statistical purpose in the terms aforesaid.

Order pronounced on Wednesday, the 04th day of September, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th September, 2019
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Pune
4. The Pr. Commissioner of Income Tax-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune