

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No. 856/Del/2016
[Assessment Year: 2011-12]**

Shri Brij Gopal Chauhan, C-261A, vs Income Tax Officer,
Main Market, Kondli, Delhi-96 Ward-36(4), New Delhi
PAN-AHFPC5855M

(Appellant)

(Respondent)

Appellant by None
Respondent by Ms. Ashima Neb, Sr.DR
Date of Hearing 09.09.2019
Date of Pronouncement 30.09.2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 3.12.2015 in Appeal No. 26/14-15 passed by the Commissioner of Income Tax (Appeals)-19, New Delhi (for short "learned CIT(A)"), Shri Brij Gopal Chauhan (the assessee) filed this appeal.

2. Brief facts of the case are that the assessee is an individual and said to have been eking out his livelihood being a petty shopkeeper. Return of income for assessment year 2011-12 was filed on 10.8.2011 declaring total income of Rs. 9,31,530/-. Notice under sections 143(2) and 142(1) were issued to the assessee. Assessee engaged and

changed his authorized representatives, but finally came forward with the plea that no notice under section 142(3) was served. Learned Assessing Officer, basing on the provisions of the section 292B of the Income Tax Act, 1961 (the Act) rejected the objection raised by the assessee and proceeded the assessment proceedings.

3. Learned Assessing Officer recorded that the assessee did not cooperate with the department in determining the correct tax liability, thereby levying no option to him but to complete the assessment on the basis of material available on record.

4. Learned Assessing Officer recorded the fact that the assessee admitted before him in the statement that no books of accounts were maintained. On sales of Rs. 12,36,48,258/-, the Assessing Officer recorded that an addition of Rs. 50 Lacs had to be made through the sales on the basis of the determination of income done for the earlier year. So also, the learned Assessing Officer made addition to the tune of Rs. 14,50,000/- towards labour charges discount, car insurance etc., basing on the estimate for the earlier year.

5. Further, learned Assessing Officer found that a copy of purchase deed dated 14.1.2010 registered at the office of the Sub Registrar, Ghaziabad shows that the assessee purchased a residential plot at Pragati Vihar Village and on that account, Learned Assessing Officer made an addition of Rs. 54,78,380/- towards undisclosed investment.

6. Aggrieved by the said addition assessee carried the matter in appeal before the learned CIT(A). Learned CIT(A) on a consideration of material before him, took a view that in the earlier year 5% of the

turnover was taken as the profit, and if such estimate is applied, the profit of the shares comes to Rs.61,82,410/-. Learned CIT(A) took cognizance of the fact that the learned Assessing Officer estimated the profit of the assessee only at Rs. 50 Lac which is less than the 5% of the turnover for this year. Learned CIT(A), therefore, declined to interfere with the addition made by the Assessing Officer at Rs. 50 Lacs.

7. However, since the books of accounts were rejected and the estimation was made on adhoc basis, learned CIT(A) though it fit not to sustain any disallowance basing on books and,therefore, he directed the deletion of Rs. 14.5 Lacs.

8. Lastly, in respect of the undeclared investment to the tune of Rs. 58,78,380/-, it was the opinion of the learned CIT(A) that if at all an addition has to be made, it had to be made in the assessment year 2010-11 but not 2011-12 in view of the fact that the sale deed dated 14.1.2010. On this score, learned CIT(A) deleted the addition of Rs. 54,78,380/-. The assessee is, therefore, aggrieved by the order of the learned CIT(A) in sustaining the addition of Rs. 50 Lacs. He challenged the legality of the proceedings stating that notice under section 143(2) was not received.

9. There is no representation for the assessee when the matter is called. We, therefore,proceeded with the matter by hearing the learned DR. Learned DR submitted that the impugned order is a very reasoned and a reasonable order and need not to be interfered with.

10. We have gone through the record. Insofar as estimate of profit is Rs. 50 Lacs is concerned, both the authorities referred to the

estimation made in the earlier year at 5% of the turnover. It is an admitted fact that the assessee has not been maintaining any books. No basis is furnished by the assessee to say that the estimated 5% was unreasonable. According to the learned CIT(A), the estimate of 5% on the turnover of Rs. 12,36,46,258/- comes to Rs. 61,82,412/-. In view of the fact that the learned Assessing Officer limited the estimate of profit to Rs. 50 Lacs, Learned CIT(A) rightly accepted the same and rightly declared to interfere with the same.

11. Learned CIT(A) is also justified in deleting the additions to the tune of Rs. 14.5 Lacs basing on the books after rejection of the books. We also do not find anything illegal irregular in the order of learned CIT(A) holding that even if the purchase deed dated 14.1.2010 is true and additions have to be made on this score, the same related to the assessment year 2010-11 but not to 2011-12.

12. With this view of the matter, we find that the impugned order is quite reasoned and reasonable one and does not invite any interference by this Tribunal. We accordingly uphold the same and dismissed the appeal of the assessee.

13. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 30th September, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 30th Sep, 2019
SH

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar

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