

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.2563/Del./2016
Assessment Year 2011-2012

Shri Raghbir Singh (Prop.), Panipat. PAN AVDPS3936R C/o. Parvesh Kumar Sharma, Income Tax Advocate, 493-L, Model Town, Karnal.	vs	The Income Tax Officer, Ward – 3, Panipat.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Jain, Advocate.
For Revenue :	Ms. Rakhi Bimal, Sr. D.R.

Date of Hearing :	06.11.2019
Date of Pronouncement :	13.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, Gurgaon, Dated 09.02.2016, for the A.Y. 2011-2012.

2. Brief facts of the case are that return declaring income of Rs.6,11,170/- was filed on 13.09.2011. The

assessee derives income from contract work. During the course of assessment proceedings, the A.O. asked the assessee to produce complete books of accounts along with details/documents as per questionnaire issued by him. The A.O. also asked the assessee to furnish evidence with regard to cash deposits of Rs.83 lakhs in savings bank account with Corporation Bank. The assessee failed to furnish the requisite details or produce books of accounts. The A.O. issued show cause notice as to why the income may not be estimated by taking net profit @ 12%. in spite of repeated opportunities and show cause notice the assessee failed to produce books of accounts, bills and vouchers and the requisite information. The AO accordingly estimated the income of the assessee by applying net profit rate of 12%. Addition of Rs.18,93,183/- was accordingly made. The AO further noted that as per the form 26AS, the income tax return filed by the assessee furnished the difference of Rs.5,74,637/- as per details of Form No.26AS. This discrepancy was also confronted to the assessee. The A.O. noted that as per the copy of the bank account of the

assessee with State Bank of Bikaner and Jaipur, the assessee had received Rs.3 lacs on 08.07.2010 from M/s Om Track Builders and Rs.1,50,000/- on 15.07.2010 from M/s Shiv Ram Construction. These receipts had not been detected by the assessee in the receipts shown in the return. The A.O. asked the assessee to explain why addition of Rs.4,50,000/- may not be made on this account. In spite of opportunity, no reply was submitted by the assessee. The A.O. accordingly made an addition of Rs. 4,50,000/-.

3. The A.O. further noted from the details of 26AS downloaded from the system, the assessee had received the payment of Rs.1,06,644/- from M/s Mukand Engineers Ltd.. This amount was not shown in the gross receipts by the assessee. The AO asked the explanation of assessee. In the absence of any explanation, A.O. made the addition accordingly.

4. The AO also verified the details of bank account of the assessee maintained with Corporation Bank. Panipat which revealed that there were cash deposits of Rs.83 lakhs in this bank account on different dates during the financial

year 2010-11. The A.O. asked the assessee to explain the sources of these bank deposits along with supporting documents. However, no explanation have been given, therefore, A.O. made the addition of Rs.83 lakhs to the income of assessee.

5. The assessee challenged all the four additions before the Ld. CIT(A) and also filed application for admission of additional evidences under Rule 46A of I.T. Rules. Remand report of the same was called for from the A.O. The A.O. reiterated the facts stated in the assessment order. The assessee was asked to file rejoinder. The assessee explained that documents could not be submitted because his only son was suffering from Cancer. The assessee submitted that flat rate of 7% may be applied to the contract work and relied upon Order of ITAT, Chandigarh Bench in the case of Sudershan Kumar Shekhar vs., ACIT in ITA.No.101/Chd./2011. The assessee further submitted that assessee received Rs.3 lakhs from M/s. Om Track Builders and Rs.1,50,000/- from M/s. Shiv Ram Construction. The assessee submitted that as the amounts were security released from these firms

but as he could not produce the necessary documents, therefore, the same may be added to the, gross receipts of the assessee before applying the flat rate to meet the end of Justice.

6. The assessee regarding addition of Rs.1,06,400/- submitted that it is a receipt from M/s Mukand Engg. Ltd., as available from the detail of 26AS downloaded from system. The assessee submitted that no such amount has been received and also filed affidavit.

7. Regarding addition of Rs.83 lakhs, as cash deposit in Corporation Bank, it was submitted that cash deposits are withdrawn from O.D account of Corporation Bank. Copies of the same were filed to show that deposits are withdrawn from O.D account. The Ld. CIT(A) deleted addition of Rs.83 lakhs, however, maintained the remaining three additions.

8. We have heard the Learned Representative of both the parties and perused the material available on record.

9. The appeal is time barred by 27 days. The assessee filed application for condonation of delay and it was submitted that son of assessee was suffering from brain tumor/cancer and was under treatment. He was his only son. Therefore, there was a delay in filing the appeal before the Tribunal. The application is supported by medical prescriptions.

10. Considering the rival submissions, we are of the view that it is a nominal delay and that explanation of assessee is supported by medical certificate. Therefore, delay in filing the appeal is condoned.

11. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and relied upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Telelinks vs., CIT, Bathinda in ITA.No.269 of 2014, Dated 20.11.2014, in which the matter was restored to the A.O. to re-determine the net profit rate. He has also relied upon Judgment of Hon'ble Punjab & Haryana High Court in the case of CIT vs.,

Amarjit Singh Bajwa [2013] 84 CCH 198 (P & H) in which it was held that *“if in earlier assessment years as well as in subsequent assessment years, a particular net profit rate has been applied, it is a prudent rate of income, which can be applied by the Revenue”*. Learned Counsel for the Assessee filed history of the assessee to show that in preceding A.Y. 2010-2011 assessee has shown net profit of 2.93% and in assessment year under appeal, assessee has shown net profit of 3.014% and in subsequent A.Y. 2012-2013 assessee has shown net profit rate of 8.134%. Learned Counsel for the Assessee, therefore, submitted that considering the history of the assessee, application of G.P. rate of 12% is excessive in nature. It is further submitted that instead of making addition of Rs.4,50,000/- and Rs.1,06,400/-, the same may be added to the gross turnover as same was part of total receipts, therefore, separate addition may not be maintained.

12. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

13. We have considered the rival submissions. In the present case, A.O. has passed the ex-parte assessment order Dated 06.01.2014 under section 144 of the I.T. Act, 1961. The A.O. has recorded on several pages of the assessment order in non-compliance by the assessee and about the production of the books of account and other details. Some part details were submitted which were not sufficient to explain any of the issues. The A.O, therefore, in the absence of any explanation from the side of the assessee, made all the four additions. It is an admitted fact that assessee did not produce books of account, bills and vouchers before the authorities below and even same are also not produced before the Tribunal. Therefore, rejection of books of account is justified in the matter. The A.O. while estimating income of assessee, has applied net profit rate of 12%. However, Learned Counsel for the Assessee has filed chart of net profit rate for earlier year as well as subsequent years which shows that in subsequent assessment year assessee has declared

8.134% as net profit rate, however, in A.Y. under appeal, net profit rate is 3.014%. The assessee submitted before the Ld. CIT(A) that net profit rate of 7% may be applied as was also done by ITAT, Chandgarh Bench in the case of Sudershan Kumar Shekhar vs., ACIT ITA.No.101/Chd./2011. However, considering the non-cooperation from the side of the assessee and non-production of the books of account and that assessee declared net profit rate of 8.134% in subsequent assessment year, we are of the view that application of net profit rate of 12% by the authorities below is excessive and unreasonable. Therefore, considering the history of the assessee, we direct the A.O. to apply net profit rate of 8% against the total turnover and made addition accordingly. This ground of appeal of assessee is accordingly partly allowed.

14. The next addition is Rs.4,50,000/-.

15. The assessee stated that these are the amounts which were received from M/s. Om Track

Builders and M/s. Shiv Ram Construction. The assessee also submitted before the Ld. CIT(A) that these amounts were security released from these firms, for which, assessee could not produce any evidence. Therefore, these are not part of the receipts pertaining to the contract business. Therefore, same could not be included in the total turnover for the purpose of application of net profit rate. These are in the nature of unexplained cash credit, which, assessee has not shown to the Revenue Department and has also not explained. Therefore, addition of Rs.4,50,000/- is maintained.

16. The next ground is with respect to addition of Rs.1,06,400/-.

17. The assessee merely contended that this amount was never received by him. However, A.O. found from Form 26AS downloaded from the system that assessee has received this amount of Rs.1,06,400/- from M/s. Mukand Engg. Ltd. Assessee has not explained at all as to on what account the amount have

been received. Assessee submitted that this amount have not been received by the assessee. Therefore, it is also unexplained credit in nature and authorities below have correctly made the addition of Rs.1,06,644/-. This ground of appeal of Assessee is dismissed.

18. In the result, appeal of assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 13th November, 2019
VBP/-
Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.