

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI O. P. MEENA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 4369 & 4370/DEL/2014
(Assessment Years : 2009-10 & 2010-11)**

M/s. Royal Tech. Enterprises, J-127, Pandav Nagar, Meerut. (PAN : AAJFR 1410 L)	Vs	Income Tax Officer, Ward - 2, Meerut.
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Premjit Kashyap, C.A.
Respondent by	Shri S. N. Meena, Sr. D.R.

Date of Hearing	20.11.2019
Date of Pronouncement	22.11.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 11.03.2014 and 28.03.2014 passed by the Commissioner of Income Tax [Appeals] - Meerut for Assessment Years 2009-10 & 2010-11 respectively.

2. The Grounds of appeal are as under:-

ITA No. 4369/Del/2014

- (1) *“That the addition of Rs. 35 Lacs as made by the AO and sustained by CIT (A) out of the Sundry Creditors is arbitrary, unjust and any rate very excessive.*
- (2) *That the additional evidence as collected and furnished by the AO in*

remand proceedings on the instruction of CIT (A) vide letter dated 22/02/2013 u/s 250(4) ought not to have rejected by the incumbent CIT (A) in terms of rule 46(A) not invoked by assessee and accordingly the sustenance of such addition of Rs 35 Lacs without appreciating the evidence available on record by CIT (A) is arbitrary unjust and untenable under the law.

- (3) *That the assessee denies his liability to pay interest charged u/s 234A, u/s 234B, and u/s 234C.*
- (4) *The above grounds of appeal are independent and without prejudice to one another.*

Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.”

ITA No. 4370/Del/2014

- (1) *“That the addition of Rs. 65,27,016/- being the Sundry Creditors u/s 68 by the AO and sustained by CIT(A) is arbitrary, unjust and any rate very excessive.*
- (2) *That without prejudice to ground no 1 above the CIT (A) as erred on facts and under the law sustaining the addition of Rs.63,90,568/- being the opening balance of such sundry Creditors brought forward from earlier year.*
- (3) *That the AO and CIT (A) ought not to have made addition in respect of such Sundry Creditors which were considered and make part of addition in A.Y 2009-10 as forming part of the opening balance of such Sundry Creditors and accordingly the addition of such Sundry Creditors again under appeal is arbitrary, unjust and amounts to double addition.*
- (4) *That the assessee denies his liability to pay interest charged u/s 234A, u/s 234B, and u/s 234C.*
- (5) *The above grounds of appeal are independent and without prejudice to one another.*

Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.”

3. The assessee is a partnership firm engaged in the contract business for various telecom companies. The main work undertaken by the firm was civil work, digging of trenches and laying of cable unit. Due to nature of work carried out by the assessee the work was done exclusively through sub-contractors, laboures, etc. The assessee filed Income Tax Return on 30.09.2009

showing income at Nil which was duly processed. The case was selected for scrutiny and subsequently a notice u/s 143(2) was issued on 19.08.2010 in response the assessee filed reply and documentary evidences. During the course of proceedings, along with other queries the assessee was asked to file the complete details in respect of sundry creditors. But the assessee could not file the requisite information about the Sundry Creditors even after availing several opportunity. The Assessing Officer further asked as to why the total amount of Rs.2,22,08,770/- shown as sundry creditors in his balance sheet should not be added in the income of the assessee in absence of any evidences. In response, the Counsel of the assessee produced the copy of bank accounts of the next year of the assessee and explained that the payments to the sundry creditors have been made in the next year which may be verified for the same. The Assessing Officer made addition of Rs.35,00,000/- which could not be verified from the balance sheet.

4. Being aggrieved by the assessment order the assessee filed an appeal before the CIT(A) the CIT(A) dismissed the appeal of the assessee without accepting details in respect of creditors filed before the CIT(A) under Rule 46A of the Income Tax Rules, 1962.

5. The Ld. AR submitted that keeping in view of the business of the assessee where the direct work has been done on different locations and locating petty contractors, after a gap of three years from, is difficult to locate the contractors. The contractors kept on changing their location due to which some notices u/s 133(3) were not served. The Ld. AR further submitted that if sum of Rs.35,00,000/- is added along with income offered for tax of Rs.9,20,780/- the net profit rate on gross receipts of Rs.2,16,65,407/- will come to 20.40%. The net profit rate in assessee's own case which have been completed u/s 143(3) of the Act for A.Y. 2008-09 was 3.08%, in A.Y. 2010-11 was 5.80%, in A.Y. 2011-12 was 4.47%, in A.Y. 2012-13 was 5.02%. The Ld AR further submitted that the Assessing Officer as well as CIT(A) should have

applied reasonable NP rate on the gross receipts of Rs.2,16,65,407/- of 4% or so but i.e. not the case. Therefore, the Ld. AR requested that this issue may be remanded back to the file of the Assessing Officer to work out income afresh after considering the net profit rate in both the years. The Ld. AR for A.Y. 2010-11 submitted that the Assessing Officer already worked out the income after applying the net profit rate of 8% then no addition can be made u/s 68 of the Act on account of unexplained creditors. In respect of this contention, the Ld. AR relied upon the decision of the Hon'ble Jurisdictional High Court in case of CIT vs. Banwari Lal Banshidhar (1998) 229 ITR 229 wherein it was held that when the gross profit rate is applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases made by the assessee.

6. The Ld. DR submitted that the CIT(A) as well as the Assessing Officer was right in applying the NP rate at 8% of gross receipts. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the materials available on record. It is pertinent to note that the assessee before the CIT(A) submitted certain evidences / details which was not earlier brought on record by the assessee. The CIT(A) without going into the said details has rejected the same. Besides that the assessee also is requesting that the reasonable NP rate has not been taken into account for subsequent as well as previous assessment years by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the CIT(A) to apply the reasonable rate after verifying all the aspects regarding this contention of the assessee. Needless to say the assessee be given opportunity of hearing by following principle of natural justice. Thus, the appeal being ITA No.4369/Del/2014 for A.Y. 2009-10 is partly allowed for statistical purposes.

8. As regards appeal being ITA No.4370/Del/2014 for A.Y. 2010-11, the same is having identical issue and therefore same reasoning will be applicable

in this case as well which was given hereinabove for A.Y. 2009-10. Therefore, the appeal being ITA No.4370/Del/2014 is partly allowed for statistical purposes.

9. In result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 22nd day of November, 2019.

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 22/11/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI