

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 5471/DEL/2017 (A.Y 2013-14)**

Shri Jitender Singh C/o Janjeevan Hospital Jaghjeetpur, Kankhal, Haridwar (Uttarakhand) (PAN : AHAPS 4448 R)	Vs	Additional Director of Income Tax, Range – 2, Intl. Taxation New Delhi.
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant by</b>	<b>Sh. Neeraj Jain and Sh. P. K. Mishra, C.A.</b>
<b>Respondent by</b>	<b>Shri G. Johnson, Sr. D.R.</b>

<b>Date of Hearing</b>	<b>09.01.2020</b>
<b>Date of Pronouncement</b>	<b>15.01.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax [Appeals]-Dehradun dated 23.06.2017 for Assessment Year 2013-14.

2. The Grounds of appeal are as under:-
  - “1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.
  2. That the learned Commissioner of Income Tax (Appeals) in paragraphs 14 to 21 of order has erred in giving various directions in the nature of delegation of his powers to the Assessing Officer to arbitrarily determine the cost of construction without providing any opportunity of being heard to the appellant.

3. *That the learned Commissioner of Income Tax (Appeals) in para 14 of the order has erred in law and in facts in rejecting the material impounded during the course of survey as a basis for determining the cost of construction of M/s Janjeevan Hospital.*
4. *That the learned Commissioner of Income Tax (Appeals) in para 15 of the order has erred in giving a direction the Assessing Officer to re-compute year-wise cost of construction of the property and add only that amount to the income of the assessee, which is determined to be the unexplained investment in the construction of the hospital for the assessment year in question.*
5. *That the learned Commissioner of Income Tax (Appeals) in para 16 of the order has erred in adopting the plinth area rates as against the item-wise rate of valuation.*
6. *That the learned Commissioner of Income Tax (Appeals) in para 17 of the order has erred in giving a finding that there is a suppression of cost of construction by the Registered Valuer in adopting the incorrect schedule of rates.*
7. *That the learned Commissioner of Income Tax (Appeals) in para 18 of the order has erred in directing the Assessing Officer to arrive at the cost of construction.*
8. *That the learned Commissioner of Income Tax (Appeals) in para 19 of the order has erred in adopting the rates of the Valuation Officer for determining the cost of construction.*
9. *That the learned Commissioner of Income Tax (Appeals) in para 21 of the order has erred in directing the Assessing Officer to complete the valuation in the manner stated by him and to bring to tax the differences in the investment so determined and offered for taxation by the appellant.*
10. *The above grounds of appeal are without prejudice to each other.*
11. *The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal.”*

3. The assessee is a labour supply contractor. The original return of income was filed on 28-09-2013 at a total income of Rs. 8,97,592/-. On 05.12.2013, a survey u/s 133A of the Act was conducted, after which the assessee filed revised ITR on 24.02.2014 showing total income at Rs. 1,47,94,720/-. During the course of assessment, the Assessing Officer examined the net profit of Rs. 7,91,716/- from the labour supply business and observed that during the course of the assessment, the assessee had shown net profit from this business

at 5.49% whereas for the previous years, the assessee had shown net profit from the same business at 6.85%. The assessee was asked to justify the N.P shown by him. The assessee submitted explanation that it had obtained tenders awarded from BHEL on lowest premium at 6.75% and booked 94% expenses on overtime bonus, EPF, ESIC, service tax etc which was calculated and confirmed by BHEL officials. The Assessing Officer did not find the reply to be satisfactory and rejected the books u/s 145(3) in respect of this business and proceeded to estimate the profit at 8% of receipts. The Assessing Officer also observed that during the course of the year the assessee was running a hospital called Janjeevan Hospital, as per which he declared net loss of Rs. 10,27,975/-. The assessee was asked to explain the reason of loss from the hospital. The Assessing Officer held that since the assessee had not shown any income from the Janjeevan Hospital in the original ITR, this clearly showed that the books of account of the assessee did not project the correct picture of financial affairs of the assessee. Further, the Assessing Officer noted that the assessee had not produced any books of accounts and documents in respect of Janjeevan Hospital, he proceeded to reject the books of accounts and estimated the profit from Janjeevan Hospital at 8% of gross receipts. Thus the Assessing Officer combined the receipts from labour supply from the same to be Rs. 12,25,593/-. Accordingly addition of Rs. 4,33,877/- was made over and above what was declared in the return. During the course of assessment proceedings, the Assessing Officer also found that a partnership deed was constituted for running Janjeevan Hospital. As per the deed, the partners were entitled to a monthly salary of Rs. 10,000/- each. When asked in this regard, the assessee submitted that the partnership firm was constituted on 01.07.2012, and dissolved on 15.08.2012. Salary of Rs.15,000/- was payable to Smt. Prabha Singh, wife of the assessee, as per the said partnership deed but the assessee had no objection if the account was added back to the income of the assessee. Accordingly, the Assessing Officer added back this amount u/s 64 of the Income Tax Act. The Assessing Officer also observed that a lift had been installed in the Janjeevan Hospital but no document/invoice with regard to the

same was found either during the survey, or submitted by the assessee during the course of assessment proceedings. When asked to explain, the assessee submitted that a second hand lift amounting to Rs. 3.50 Lakhs had been purchased and installed in the hospital. However since the assessee could not submit any documentary evidence regarding this, the Assessing Officer estimated the investment in the lift at Rs. 5 lakh and added the same back to the income of the assessee u/s 69 of the IT Act. The Assessing Officer also recorded the fact that during the course of survey u/s 133A of the IT Act, it was found that the assessee had made huge investment in the hospital building. The assessee admitted of having invested Rs 69 lakh in the construction of building and surrendered this amount along with investment in machinery and equipment for the hospital in AY 2013-14. The total surrender was made of Rs. 1.5 crores. In order to verify the actual cost of construction, the Assessing Officer referred the matter to the Valuation Officer of the Income Tax Department as per the provisions of section 142A. The Valuation Officer estimated the value of the building, as on 13.03.2013, at Rs. 4,08,10,300/- whereas the assessee has surrendered Rs. 1 crore on this account during A Y. 2013-14. The assessee was therefore asked to explain as to why the difference of Rs. 3,08,10,300/- may not be added to his income as unexplained investment u/s 69 of the Income Tax Act. In response, it was submitted by the assessee that the estimation of hospital building at Rs.4,08,10,300/- was impractical as the CPWD rates had been adopted by the Valuation Officer whereas local rates as per PWD norms should have been used. It was also submitted by the assessee that the Valuation Officer had not viewed the rooms from inside and that all rooms were ordinary and fixtures were of simple category. Therefore, the Valuation Officer had taken a very high rates @ Rs. 24,063/- per sq mtr. in estimating the cost of building. By way of comparison, it was submitted by the assessee that the VO had recently estimated the value of a residential building of three storeyed RCC framed structure with class one stone and multiple underground wiring at Green View, near the Jwalalpur, and estimated the said residential building @ Rs. 19,615/- per sq. mtr. Hence, it

was replied that the rate adopted in the present case was excessive. Furthermore, the assessee had not been given any benefit of self supervision @ 7.5%, while the same had been allowed in the case of other assessee. This would result in a rebate of Rs. 30,60,773/- as per the estimate made by a Valuation Officer. The Assessing Officer considered the submissions and stated that he did not have the authority to change the said rate as they were CPWD rates. He further held that the self supervision rates were not allowed to the assessee, in view of the facts of the case. Therefore, it was not to be allowed. After observing that, of the surrendered amount, only Rs.70,60,117/- pertained to the hospital building, the Assessing Officer held that the balance amount of Rs.3,37,50,183/- was to be added back u/s 69 of the Act.

4. Aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the DVO has not considered the books of accounts at all. The Ld. AR submitted that the Valuation Officer estimated the cost of construction against the internal valuation report. The Valuation Officer has estimated the construction cost at very higher rates for a normal construction of hospital which is used by the public only. The Ld. AR further submitted that the local state PWD rates should have been applied in the present case. Hence, the Ld. AR submitted that the addition on the basis of the Valuation Officer should be deleted as the Valuation Officer did not provide the benefit or supervision to the assessee who is a contractor and labour supplier. But the benefit of personal supervision was provided by the Valuation Officer for residential construction. It shows the inapplicability of the statutory rates to be followed by the DVO. Thus, the Ld AR submitted that the assessee should be allowed the benefit of personal supervision at 7.5% as provided to others.

6. The Ld. DR submitted that the Assessing Officer as well as the CIT(A) with reason and proper finding has sustained the addition as no books were

maintained by the assessee. Further, the Ld. DR submitted that no quantity wise details were furnished by the assessee during the assessment proceedings as well as appellate proceedings. 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 relevant materials available on record. From the perusal of the records it can be seen that the quantity wise details were not given by the assessee before the Assessing Officer. In fact, the observation of the Assessing Officer that no proper books of accounts were maintained by the assessee was not properly adjudicated by the Assessing Officer and simply rejected the books. The CIT(A) also has not called for any books on the issue contested by the assessee. Besides that the question of which rate should be applied or not has also not been verified by both the Assessing Officer as well as the CIT(A). Thus, it will be appropriate to remand back this issue in entirety to the file of the Assessing Officer for fresh adjudication. Needless to say the assessee be given opportunity of hearing by following the principle of natural justice. Thus, the appeal of the assessee is partly allowed for statistical purpose.

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

**Order pronounced in the Open Court on 15<sup>th</sup> day of January, 2020.**

Sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 15/01/2020  
*Priti Yadav, Sr. PS \**

Copy forwarded to:

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

## ASSISTANT REGISTRAR

## ITAT NEW DELHI

Date of dictation	13.01.2020
Date on which the typed draft is placed before the dictating Member	14.01.2020
Date on which the typed draft is placed before the Other Member	15.01.2020
Date on which the approved draft comes to the Sr. PS/PS	15.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	15.01.2020
Date on which the fair order comes back to the Sr. PS/PS	15.01.2020
Date on which the final order is uploaded on the website of ITAT	15.01.2020
Date on which the file goes to the Bench Clerk	15.01.2020
Date on which the file goes to the Head Clerk	