

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1471/MUM/2018
Assessment Year: 2014-15**

R.K. Madhani & Co, 127-136, Madhani Estate, 542 Senapati Bapat Marg, Dadar (W), Mumbai - 400028 PAN : AAAEFR6706J	Vs.	The Dy. Commissioner of Income Tax, Central Circle 8(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Anant N. Pai (AR)
Revenue by : Shri D.G. Pansari (DR)

Date of Hearing: 05/09/2019
Date of Pronouncement: 04/12/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 28.12.2017 passed by the Commissioner of Income Tax (Appeals)-50 (for short 'the CIT(A), Mumbai, for the assessment year 2014-15, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee firm carrying on civil construction for various Govt./Semi Govt. authority, filed its return of income for the assessment year under consideration declaring the total income at Rs. 12,28,44,430/-. Since the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. However, the assessee did not respond to the same. Accordingly, the AO issued fresh notices u/s 142 (1) on 10.06.2016, 18.07.2016 and 16.08.2016. In response thereof, the authorized representative

requested for transfer the case to Central Circle Mumbai. Accordingly, the case was transferred to Central Circle Mumbai. Fresh notice u/s 142 (1) was issued on 20.10.16 , 03.11.2016 and 15.11.2016, however, in response to the said notices the assessee did not file any reply. Finally, vide notice dated 15.12.16, the assessee was asked to show cause as to why an ex-parte assessment order u/s 144 of the Act should not be passed. Since, the assessee did not comply with any of the notices sent u/s 142 (1) of the Act, the AO proceeded to complete assessment on the basis of material available on record. It was noticed that the assessee had claimed expenditure of Rs. 2,17,82,72,458/- in its P & L account and since, no explanation was given by the assessee, the AO made addition of the said amount to the income of the assessee and determined the total income at Rs. 2,30,11,16,890/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld.CIT (A) after hearing the assessee, partly allowed the appeal for the statistical purposes and restricted the addition to Rs. 4,52,30,169/-, worked out in its order. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

“Ground No. 1: On the facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in rejecting the books of accounts of the Appellant and making an addition to his business income @ 4,52,30,169/- on estimated basis and without any credible reasons on hand to support the addition.

The addition of Rs. 4,52,30,169/- being so made, deserves to be deleted in appeal.

Ground No. 2: Without prejudice to the above ground, the Appellant submits that the addition of Rs. 4,52,30,169/- is any case excessive and deserves to be reduced in appeal.

Ground No. 3: The learned Commissioner (Appeals) also erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The orders passed by him is in contravention of the principles of natural justice and hence, bad in law.”

4 Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly disallowed Rs. 4,52,30,169/- out of the total expenditure claimed by the assessee by rejecting the books of account of the assessee. The Ld. counsel further submitted that the Ld.CIT (A) has wrongly passed the impugned order without affording a reasonable opportunity of being heard to the assessee. Without prejudice, the Ld. counsel submitted that the addition confirmed by the Ld.CIT (A) is excessive and deserves to be reduced to a reasonable amount. The Ld. counsel further contended that the assessee filed revised return on 30.11.2015 declaring the total income at Rs. 11,51,01,710/-. However, the AO passed the assessment order on the basis of original return without taking into consideration the revised return filed by the assessee. During the appellate proceedings, the Ld. CIT(A) sought remand from the AO, however, the AO did not submit the same. The Ld. counsel further contended that the Ld.CIT (A) has wrongly rejected the books of account and made the disallowance in question on estimation basis. The best judgment assessment u/s 144 of the Act can be passed where the AO is not satisfied about the correctness or completeness of the accounts or where the method of accounting has not been regularly followed by the assessee or the assessee has not been following the accounting standards. In the present case, the Ld. CIT (A) has not pointed out the reason for rejecting the books of account. The Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of *State of Kerala vs. C. Velukutty 60 ITR 239 (SC)*, *State of Orisa vs. Maharaja Shri V.P Deo 76 ITR 690 (SC)* and *Brijbhushan Lal Praduman Kumar vs. CIT 115 ITR 524 (SC)*, in which the Hon'ble Supreme Court has held that while making best judgment assessment, the authority must take an honest and fair estimate of income of the assessee and same must not be capricious but should have reasonable nexus to the available material and circumstances of the case. Accordingly, the Ld. counsel submitted that the addition made by the Ld.CIT (A) on estimation basis is liable to be deleted.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld.CIT (A) submitted that though the assessee failed to appear before the AO, despite affording a reasonable opportunity of being heard by the AO, yet the Ld CIT(A) has decided the appeal of the assessee after hearing the assessee on each and every point. The Ld. DR further submitted that since the Ld. CIT (A) has confirmed the disallowance after hearing the assessee in the light of the evidence on record, there is no infirmity in the order passed by the Ld.CIT (A) to interfere with the same.

6. We have heard the rival submissions of the parties and carefully perused the material on record including the cases relied upon by the authorities below and the Ld. counsel for the assessee, in the light of the rival contentions. As pointed out by the Ld. counsel for the assessee, the assessee filed the original return of income electronically on 18.09.2014 and filed revised return on 30.11.2015. However, there is no reference of revised return in the assessment order dated 27.12.2016, passed by the AO u/s 143 (3) of the Act. The Ld. CIT (A) has also mentioned in the impugned order that the assessee filed revised return on 30.11.2015 declaring the total income of Rs. 11,51,01,710/- as against the income declared at Rs. 12,28,44,430/- in the original. Further, as pointed out by the Ld. counsel, the AO has not submitted remand report sought by the Ld. CIT (A), the Ld. CIT (A) has pointed out in its order that the AO has not submitted remand report despite reminder issued by the office.

7. We further notice that the Ld. CIT (A) has sustained the addition of Rs. 4,52,30,169/- by applying profit rate of 4% of the turnover and applying a net profit rate of 2.5% on the turnover by rejecting the books of account of the assessee under the provisions of section 145 (3) of the Act. We further notice that the Ld. CIT (A) has not given any reason for rejecting the books of account of the assessee.

8. Admittedly, in the present case, the AO has passed the assessment order without hearing the assessee. On the other hand, the Ld. CIT(A) has determined the disallowance on estimation basis after rejecting the books of account of account, that too without assigning any cogent reason. Accordingly,

in our considered view, the impugned order is not in accordance with the evidence on record and as per the settled principles of the law therefore, the issue needs fresh adjudication by the AO after proper verification of the books of account maintained in the light of the contentions of the Assessee. Accordingly, we set aside the impugned order passed by the Ld.CIT (A) and remit the issue back to the file of AO for passing assessment order afresh in accordance with law after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2014-15 is allowed for statistical purposes.

Order pronounced in the open court on 4th December, 2019.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 04/12/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai