

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1681/Del./2017
(ASSESSMENT YEAR : 2012-13)**

Shri Raj Kumar, vs. ITO, Ward 3 (3),
C/o Kunal Aggarwal & Associates, Gurgaon (Haryana).
226, JMD Megapolis, 2nd Floor,
Sector 48, Sohna Road,
Gurgaon – 122 001 (Haryana).

(PAN : AWDPK3434D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Satish Kumar Gupta, Senior DR

Date of Hearing : 17.02.2020

Date of Order : 20.02.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Raj Kumar (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 09.02.2017 passed by the Commissioner of Income - tax (Appeals)-1, Gurgaon qua the assessment year 2012-13 on the grounds inter alia that :-

“1. In the facts and circumstances of the case, whether the Ld CIT(A)-I Gurgaon, was justified in confirming the estimation of net profit @12% of the turnover ignoring the guidelines

prescribed by Hon'ble Punjab and Haryana High Court in the case of Telelinks v. CIT 377 ITR 158?

2. In the facts and circumstances of the case, whether the Ld. CIT(A)-I Gurgaon, was justified in confirming the addition of outstanding sundry of Rs.2,13,58,136/- as on 31.03.2012 u/s 68 of the Income Tax Act, 1961?

3. In the facts and circumstances of the case, whether the Ld. CIT(A)-I Gurgaon, was justified in not allowing the depreciation u/s 32 of the Income tax Act,1961 and in ignoring the circumstantially available fixed asset bill and registration certificates in support of purchase of fixed assets completely?"

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee filed return of income at Rs.6,58,220/- which was put to scrutiny proceedings. On failure of the assessee to prove the books of accounts in the shape of ledger, cash book, bank book, etc. along with supporting bills and vouchers, Assessing Officer (AO) invoked the provisions of section 145 (3) of the Income-tax Act, 1961 (for short 'the Act') and rejected the books of account.

3. Assessee declared gross receipts of Rs.5,95,63,000/- and claimed expenses of Rs.5,88,55,182/- under various heads and has declared the net profit of Rs.7,07,818/- in the profit & loss account which comes to 1.15%. However, AO estimated the net profit @ 12% keeping in view the average net profit rate in the similar sector of business and thereby made an addition of Rs.71,47,560/- - Rs.7,07,818/- (already shown the profit & loss account) = Rs.64,39,742/-. AO also made addition of Rs.2,13,58,136/- u/s 68

of the Act on failure of the assessee to file reply/confirmations from its creditors.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Senior Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, assessee has failed to produce the books of account in the shape of ledger, bank book, cash book, etc. along with supporting bills and vouchers before the AO. Even during the appellate proceedings before the Id. CIT (A), assessee has failed to produce the books of account rather challenged the estimation of profit rates on the ground that as compared to earlier years profit rates, the rate of 12% is not justified. Assessee has also failed to prove the liability of Rs.2,13,58,136/- by producing confirmation

from his sundry creditors. When the assessee has categorically admitted before the Id. CIT (A) that he is unable to produce books of account and supporting vouchers, we see no scope to interfere into the estimation of net profit @ 12% by the AO and confirmed by the Id. CIT (A).

8. So far as question of making an addition of Rs.2,13,58,136/- on account of non-confirmation by the sundry creditors to prove the liability claimed by the assessee is concerned, during appellate proceedings assessee filed confirmations with regard to 4 sundry creditors, namely, Konark Sales Corporation, Ganpati Traders, S.R. Industries Gases & Shree Rama Tyre of Rs.11,23,437.50, Rs.33,48,780/-, Rs.4,52,792.28 & Rs.5,88,904.08 respectively qua which additional evidence was admitted by calling the remand report from the AO. However, Id. CIT (A) proceeded on the premise that the assessee admitted before the AO that addition on account of sundry creditors was an agreed addition. However, Id. CIT (A) also proceeded to examine the confirmations of only 4 creditors out of the sundry creditors on merits and proceeded to confirm the addition on the ground that the assessee has failed to furnish the evidence to prove the genuineness of the sundry creditors. So, we find no scope to interfere into the findings

returned by the Id. CIT (A) when the assessee has himself not brought on record the evidence to support his claim.

9. So far as question of disallowing the depreciation u/s 32 of the Act on vehicles i.e. trucks and cars by the AO as well as Id. CIT (A) is concerned, we are of the considered view that when the assessee has failed to produce the purchase bills with regard to vehicles on which the depreciation was claimed and has also failed to produce the fabrication cost of Rs.10 lacs per truck included in the cost, the depreciation has been rightly disallowed by the AO and confirmed by the Id. CIT (A). Moreover, the assessee has not made any such claim of depreciation on vehicles in the return of income filed. So, again we find no scope to interfere with the findings returned by the Id. CIT (A).

10. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced in open court on this 20th day of February, 2020.

Sd-

**(O.P. KANT)
ACCOUNTANT MEMBER**

sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 20th day of February, 2019

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**