

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

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4048/MUM/2017
Assessment Year: 2012-13**

M/s Ganraj Developers, Opp. Pragati Quarry, Jayraj Textiles Park, Kalwar Village, Bhiwandi, Thane- 421302 PAN: AAHFG9354J	Vs.	The Asst. Commissioner of Income Tax, Circle-1, 2 nd Floor, Rani Mansion, Above Canara Bank, Murbad Road, Kalyan, Maharashtra - 421301
(Appellant)		(Respondent)

Assessee by : Vimal Punmiya (CA)
Revenue by : Bharti Singh (DR)

Date of Hearing: 18/12/2019
Date of Pronouncement: 28/02/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 27.02.2017 passed by the Commissioner of Income Tax (Appeals)-1 (for short the CIT(A) Aurangabad for the assessment year 2012-13 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 a partnership firm engaged in the business of construction, filed its return of income for the assessment year under consideration declaring total income of Rs. 99,82,358/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. In response thereof, the authorized representative (AR) of the assessee appeared before the AO and submitted details. It was noticed that the appellant had shown net profit of 5.48% on total turnover/receipts. It was further noticed that the receipts of appellant also include godown rent of Rs. 4,59,15,773/-

godown repairs and maintenance receipt amounting to Rs. 17,90,129/-. The AO rejected the books of account and estimated the profit on an amount of Rs. 2,17,49,192/- which is 12% of the total sales generated during the year. Since the assessee had offered N.P. of 99,31,357 and made addition of Rs. 1,18,17,835/- i.e. difference between estimated NP and declared NP. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee modified the addition and estimated the NP on gross contract receipts @ 8%. 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 revised grounds:-

1. *“On the facts and in the circumstances of the case and in law, the Learned CIT (A) erred in confirming the addition of Rs. 1,04,69,427/- out of total addition of Rs. 1,18,17,835/- by estimating the net profit @ 8% on total contract receipts of Rs. 13,08,67,844/- without considering the actual profit of Rs. 99,31,357/- as shown in the income and expenditure account.*
2. *On the facts and in the circumstances of the case and in law, the Learned CIT (A) erred in confirming the action of the Assessing Officer of invoking the provisions of section 145 (3) of the Act by rejecting the books of account without accepting the explanation offered by the appellant and without considering the fact that the regular and proper books of account are maintained and the same are audited u/s 44AB of the I.T. Act.*
3. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in charging interest u/s 234B of Income Tax Act, 1961.*

4. *The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing.”*

4. The Ld. counsel for the assessee submitted that the assessee firm is a engaged in the business of construction and development. Since, the receipt from rent of godown is incidental to the main business, the rent was shown as per actual rent received. Since, the books of account of the assessee were duly audited by the CA, AO has wrongly rejected the same. The Ld. counsel further pointed out that since the assessee had declared net profit @ 4.1% in the AY 2010-11, 6.11% in the AY 2011-12, the Ld CIT(A) has wrongly made the estimation of net profit @ 8% on the contract receipts on ad-hoc basis. The Ld. counsel further pointed out that the assessee's case falls u/s 44AB of the Act and the return of income was filed within due date. Since the Ld. CIT(A) has accepted the contract receipts as per books of account and not pointed out any specific defects in expenses claimed in P & L account, the Ld. CIT (A) has wrongly rejected the declared NP of 5.48%. So far as rejection of books of account is concerned, the Ld. counsel pointed out that provisions of section 145 (3) cannot be invoked where complete books of account are maintained and the same are audited u/s 44AB of the Act. The Ld. counsel relied on the decision of the Jaipur Bench of the ITAT in the case of *Triveni Pharma (2004) 85 TTJ 950* wherein it was held that where verifiable records of opening stock purchase and closing stock are available, there is no justification of rejecting books and apply section 155(3). The Ld. counsel further relied on the various judgments of the different High Courts and the decisions of the Tribunal to substantiate the contention that the correctness of book results cannot be challenged without pointing out any specific mistake or discrepancy. In the light of the aforesaid arguments, the Ld. counsel submitted that the impugned order passed by the Ld. CIT (A) is liable to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the findings of the Ld. CIT(A), submitted that since the assessee has not maintained separate account for different activities, the Ld. CIT (A) has rightly

confirmed the action of the AO in rejecting the declared NP of 5.48% and estimated the NP @8% on the total contract receipts. The Ld. DR further submitted that there is no merit in the appeal of the assessee.

6. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the Ld. counsel. We notice that the AO has rejected the books of account merely on the ground that the assessee has shown low NP and claimed unsustainable expenses, which resulted in reduction of taxable income of the assessee. Under section 145 (3) the AO may make an assessment u/s 144 of the Act, where he/she is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting provided in sub section (1) has not been regularly followed by the assessee or the income has not been computed in accordance with the standards notified under sub section (2). However, in the present case, the AO has not pointed out any of the conditions for rejecting the books of the assessee. Further, as pointed out by the Ld. counsel, the assessee has maintained books of account regularly which are duly audited u/s 44AB of the Act. We further notice that even after the rejecting of books, the Ld. CIT (A) has estimated the net profit on the basis of contract receipts shown by the assessee in its books of account.

7. As pointed out by the Ld. counsel, the assessee had shown net profit of 4.01% in the assessment year 2010-11, 6.11% in the assessment year 2011-12. While estimating the income of the assessee, the Ld. CIT (A) has not considered the percentage of net profit declared by the assessee in earlier assessment years. In the assessment year under consideration, the assessee has declared the net profit @ 5.48%. In our considered view, the net profit declared by the assessee is reasonable and justified in view of the net profit declared during the earlier assessment years. We further notice that the Ld. CIT (A) has confirmed the action of the AO in rejection books of account *inter alia* on the ground that the assessee has not maintained the quantity wise details. As pointed out by the Ld. counsel, since the CIT (A) has accepted the purchases of raw material, construction expenses, labour charges and contract

receipts, the books of account cannot be rejected merely for the reason that the assessee has not maintained stock register on day-to-day basis. Hence, in our considered view, there is no legal basis for rejecting the books of account of the assessee and estimating the net profit on ad-hoc basis. We therefore, find merit in the arguments of the Ld. counsel that the addition made by the authorities below are not sustainable in law. Hence, we allow the appeal filed by the assessee set aside the impugned order passed by the Ld. CIT (A) and direct the AO to delete the addition.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed.

Order pronounced in the open court on 28th February, 2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/02/2020

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