

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.	A.Y.			
1200/Del./2012	2004-05	Shri Sukhwinder Singh, Prop. S.S. M/s. Builders C/o. Girish Aneja, C.A. 796, Sector- 13, U.E. Karnal. PIN 132001 PAN AMPQS9413D	vs.,	The ACIT, Karnal Circle, Aaykar Bhawan, Sector- 12, Karnal. 132001 Haryana.
1199/Del./2020	2003-04			
1201/Del./2012	2008-09			
869/Del./2012	2006-07		vs.,	The CIT- XIII, Room No.215, 2 nd Floor, C.R. Building, I. P. Estate, New Delhi.
867/Del./2012	2006-07		vs.,	The ITO, Ward-2, Aayakar Bhawan, Sector- 12, Karnal.

*ITA.Nos.1200, 1199, 1201, 868 & 876 /Del//2012
Shri Sukhwinder Singh, Prop. M/s. S.S. Builders, Karnal.*

For Assessee :	Shri Rakesh Jain, Advocate
For Revenue :	Shri Parikshit Singh, Sr. D.R.

Date of Hearing :	01.10.2020
Date of Pronouncement :	06.10.2020

ORDER

PER BENCH :

We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

2. Since common issue is involved in all the appeals, therefore, all were heard together and we dispose of the same through this consolidated Order. The issue in appeals for the A.Ys. 2003-04, 2004-05 and 2008-09 is decided as under.

ITA.No. 1200/Del./2012 – A.Y. 2004-05

ITA.No.1199/Del./2012 – A.Y. 2003-04 &

ITA.No.1201/Del./2012 – A.Y. 2008-09

3. All the appeals of the assessee are directed against the Order of the Ld. CIT(A), Karnal, Dated 03.08.2011 for the above assessment years.

4. All the appeals of the assessee are time barred by 107 days.

5. The assessee filed an application for condonation of delay in filing these appeals. It is contended in the application that the impugned order was received by the assessee on 24.09.2011. It is stated that assessee was prevented from carrying on normal activities since the first week of November, 2011 due to severe and persisting back problem arising in a road accident for which assessee has undergone extensive treatment/therapy. The assessee, therefore, explained that due to his ill-health, the appeals could not be filed on time. The assessee prayed for condonation of delay.

6. After considering the submissions of Learned Representatives of both the parties, we are satisfied that assessee was prevented by sufficient cause in not filing the

appeals within the period of limitation. Considering the small issue involved in all the appeals and explanation of assessee, we condone the delay in filing these three appeals.

7. In all the appeals, the assessee has challenged the rejection of books of account and application of net profit of 8% for computing the business income of the assessee. The facts are same. Both the parties during the course of arguments referred to the facts from A.Y. 2004-2005 [ITA.No.1200/Del./2012]. The assessee is engaged in the business of civil construction. Original assessment in this case was completed under section 143(3)/144 of the I.T. Act, 1961, determining the income at Rs.31,67,500/- by applying the profit rate of 8% on the gross contractual receipts. The appeal of assessee was dismissed by the Ld. CIT(A).

8. The assessee preferred appeal before the Tribunal and the Tribunal remanded the matter back to the file of A.O. for passing the order afresh. The A.O. asked the assessee to produce books of account supported by

complete bills and vouchers. The A.O. noted that assessee produced bills for diesel and bitumen. No other bill was produced. The A.O, therefore, concluded that books of account are not verifiable for want of bills and vouchers for all the expenses. Hence, books were rejected. The A.O. again computed the business income of assessee by applying the N.P. rate of 8% on the gross receipts and again made addition of Rs.31,67,480/-. The Ld. CIT(A) confirmed the application of N.P. rate of 8%. The Ld. CIT(A), however, directed that sales tax of Rs.16,76,105/- deducted by the various Departments was not excluded from gross contract receipts for working out the N.P. rate of 8%, since no profit element is involved in sales tax deducted, therefore, A.O. was directed to deduct sales tax from the gross receipts and thereafter, apply N.P. rate of 8%. The Ld. CIT(A) also granted relief to the assessee of rebate under section 88 of the I.T. Act. The appeal of assessee was partly allowed.

9. Learned Counsel for the Assessee contended that rejection of the books of account and application of net profit rate of 8% is unreasonable and book results should

have been accepted. He has submitted that previous history of the assessee have also not been considered by the authorities below because in assessment year under appeal, the N.P. rate declared by assessee was of 0.22% and in A.Y. 2001-2002 the assessee declared the N.P. rate of 1.54%, which have been accepted by the A.O. in the assessment under section 143(3) vide Order Dated 12.03.2003, copy of which is filed at page-185 of the PB. He has also submitted that assessee is engaged in civil construction business of constructing roads etc., for various Government Departments and profit margin is very low in this line of business. In alternate contention, he has submitted that application of N.P. rate of 8% is excessive and unreasonable.

10. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

11. We have considered the rival submissions. It is not in dispute that assessee is engaged in civil construction business and constructing roads etc., for various Government Departments. It is well known that for executing Government contracts, the profit margin is on

lower side. The A.O. in his set aside proceedings while applying N.P. rate of 8% has not referred to any comparable cases for arriving at the decision to apply the N.P. rate of 8%. However, it is a fact that assessee despite in remand proceedings have not produced complete bills and vouchers in support of the books of account, therefore, the authorities below were justified in rejecting the book results declared by assessee as per books of account. Now the question is, Whether the application of N.P. rate of 8% is justified in the matter ? Learned Counsel for the Assessee has referred to comparative chart of profitability achieved as per books of account. The assessee has declared the following N.P. rate as under :

A.Y.	N.P. Rate
2001-02	1.54%
2002-03	0.48%
2003-04	1.04%
2004-05	0.22%
2006-07	0.22%
2008-09	0.80%

11.1. The above history of the assessee clearly show that the profit margin of the assessee was very low and has never reached to the extent of 8% as is applied by the authorities below. The A.O. has not cited any comparable cases to arrive at the decision for application of N.P. rate of 8%, is justified in the matter. It is also not in dispute that in A.Y. 2001-02, the A.O. in the regular assessment under section 143(3) vide Order Dated 12.03.2003 has accepted profit rate declared by assessee at 1.54%. The A.O. made *lump sum* addition of Rs.1 lakhs on account of the expenses not verifiable and to cover-up the possible leakages. In the case of Laxminarayan Badri Das 5 ITR 170 the Hon'ble Privy Counsel held that "*estimate should be fair. The A.O. should not act dishonestly or vindictively or capriciously. His own knowledge of previous returns, local knowledge and circumstances of the assessee to be considered to arrive at fair and proper estimation of income.*" In the case of Aero Club 336 ITR 400 (Del.) the Hon'ble Delhi High Court held that "*assessment should be on rational basis. Profit margin disclosed by the assessee cannot be rejected arbitrarily.*"

Considering the facts of the case and nature of business of assessee and history of the assessee as noted above, where the highest N.P. rate accepted by the Department was of 1.54%, we are of the view that the authorities below were not justified in applying the N.P. rate of 8% to estimate the profit of the assessee. In view of the above discussion and considering the history of the assessee, we set aside and modify the Orders of the authorities below and direct the A.O. to apply N.P. rate of 2% as against 8% for determining the income of the assessee. In view of the above, appeal of assessee is partly allowed.

12. The issue is same in A.Ys. 2003-04 and 2008-09. In view of the above discussion in A.Y. 2004-05, we set aside and modify the Orders of the authorities below and direct the A.O. to apply profit rate of 2% as against 8% in order to determine the income of assessee.

13. In the result, appeals of the assessee are partly allowed.

ITA.No.869/Del./2012 – A.Y. 2006-2007 :

14. This appeal has been directed against the Order of the Ld. CIT-XXIII, New Delhi, Dated 23.03.2009 under section 263 of the I.T. Act, 1961, for the A.Y. 2006-2007.

15. In this case, the assessee filed return of income at Delhi declaring income of Rs.3,43,866/- on 31.10.2006 with Ward-38(3), New Delhi. The A.O. completed the assessment under section 143(3) vide Order Dated 27.12.2007 making addition of Rs.1,50,000/- on account of low net profit. The Ld. CIT-XXIII, New Delhi, exercised the jurisdiction under section 263 of the I.T. Act, 1961 against the assessment order precisely on the reason that A.O. at Delhi is not empowered to pass the assessment because he was lacking jurisdiction. The Order of the A.O. was set aside.

16. Learned Counsel for the Assessee during the course of hearing submitted that assessee would not press this appeal. He has also filed a request letter in writing for withdrawal of the appeal. In view of the above, ITA.No.869/Del./2012 filed against the Order passed under

section 263 of the I.T. Act, 1961, by the Ld. CIT-XXIII, New Delhi, is dismissed as withdrawn.

ITA.No.867/Del./2012 – A.Y. 2006-2007 :

17. This appeal by assessee is directed against the Order of the Ld. CIT(A), Karnal, Dated 21.11.2011, for the A.Y. 2006-2007.

18. The A.O. in this case passed the assessment order under section 144 of the I.T. Act, 1961, Dated 30.12.2008. The A.O. applied the N.P. rate of 8% and also taken interest on FDR at Rs.82,249/- and Other Income of Rs.79,71,797/-. The A.O. made the following additions as well.

- (i) Addition to capital account Rs.3,70,000/-.
- (ii) Unexplained fresh loan of Rs.69,96,000/-
- (iii) Unexplained fresh sundry creditor
Rs.58,40,621/-.

18.1. The A.O. determined the income of assessee at Rs.3,26,37,042/-. The assessment order was challenged

before the Ld. CIT(A). The appeal of assessee was partly allowed.

19. Learned Counsel for the Assessee contended that A.O. was not justified in passing the ex-parte assessment order because assessee was already assessed at Delhi and only addition of Rs.1,50,000/- was made by A.O. in the Order under section 143(3) Dated 27.12.2007. He has submitted that on the face of the Order the A.O. at Delhi with ITO, Ward-38(3) should not have passed the impugned order under section 144 Dated 30.12.2008. He has submitted that on the face of it these are contradictory Orders passed by the authorities below. He has submitted that assessee was in bonafide impression that once assessee is assessed at Delhi where assessee has shifted his business, therefore, passing of ex-parte Order is wholly unjustified.

20. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

21. We have considered the rival submissions and we find that entire matter requires reconsideration at the level of the A.O. It is an admitted fact that assessee filed return of income at Delhi with Ward-38(3), New Delhi and income of assessee for impugned A.Y. 2006-07 was assessed at Delhi under section 143(3) vide Order Dated 27.12.2007 whereby A.O. accepted the book result of assessee by making addition of Rs.1,50,000/- for any possible leakages of income. However, the ITO at Karnal Ward-2 has passed the ex-parte assessment order under section 144 of the I.T. Act, 1961, Dated 30.12.2008 when the earlier assessment order Dated 27.12.2007 at Delhi exists. There is a contradiction in both the assessment orders and income of the assessee at Karnal have been assessed at very high pitched income. Though the assessment order at Delhi was later on set aside by the Ld. CIT-13, New Delhi, vide Order Dated 23.03.2009 under section 263 of the I.T. Act, 1961, but, on the date of passing the impugned order at Karnal on 30.12.2008 the A.O. should have looked into the assessment order passed at Delhi in respect of the same

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assessee for the same assessment year. These peculiar facts clearly entitle the assessee that matter should be remanded back to the file of A.O. for fresh consideration in accordance with law. In view of the above circumstances and background of the case, particularly, when in preceding three years, we have directed the A.O. to apply N.P. rate of 2% only as against the N.P. rate of 8% determined by the A.O. and that contradictory Orders have been passed at Delhi and Karnal, interest of justice requires that entire matter should be reconsidered by the A.O. at Karnal in accordance with Law. In view of the above, we set aside the Orders of the authorities below and direct the A.O. to pass the assessment order *de novo* in accordance with Law, by giving reasonable, sufficient opportunity of being heard to the assessee. We make it clear that in case A.O. may not be satisfied with the book results of the assessee, he should not estimate the profit of the assessee by applying N.P. rate of 8% in view of our directions given in A.Ys. 2003-04, 2004-05 and 2008-09 above, the A.O. should restrict the profit at 2% only in case of rejection of the book results. In

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view of the above appeal of assessee in ITA.No.867/Del./2012 is allowed for statistical purposes.

22. To sum-up, Appeals of the assessee in ITA.No.1200/Del./2012, 1199/Del./2012, 1201/Del./2012 are allowed partly. Appeal of assessee in ITA.No.869/Del./2012 dismissed as withdrawn and appeal of assessee in ITA.No.867/Del./2012 allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th October, 2020

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.