

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1102/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

L H Patil Constructions Pvt. Ltd.
2, Archana, Jai Nagar, Jilha Peth,
Jalgaon-425 001
PAN : AAACL3083B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1, Jalgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare

Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 11.12.2020

घोषणा की तारीख / Date of Pronouncement : 14.12.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeal)-2, Nashik dated 17.02.2017 for the assessment year 2010-11
as per the following grounds of appeal on record:

“1. The learned CIT(A) erred in law and on facts in confirming the addition of Rs.22,54,821/- as mistake apparent from record u/s.154 in respect of interest income which was duly considered in the agreed addition made by the learned AO.

2. Ld. CIT(A) erred in law and on facts in not appreciating that the total addition of Rs.48,40,203/- was arrived at after due consideration of returned income of the appellant and accepted by the assessing officer. Any change in the said offer by the appellant and acceptance by the Id AO would not be a mistake apparent from record and will be a matter of debate and discussion.

3. The addition of Rs.22,54,821/-u/s.154 is without the proper jurisdiction not being a mistake apparent from record may kindly be cancelled.

4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”

2. The crux of the grievance of the assessee is with regard to the addition made through order of rectification u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the Assessing Officer and confirmed by the Ld. CIT(Appeal).

3. The facts on this issue are well enumerated at Para 6 of the order of Ld. CIT(Appeal) which is extracted herein below:

“6. From the assessment order u/s. 143(3) dated.22/08/2012, the A.O. had noticed that the appellant had filed submission dated 12/07/2012. Wherein, it had worked out the agreed addition as under:

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Total Contract receipts</i>	<i>15,07,89,759/-</i>
<i>Less. Contracts and sub contracts awarded</i>	<i>5,51,39,691/-</i>
<i>Balance</i>	<i>9,56,50,068/-</i>
<i>Profit @14% on own contracts</i>	<i>1,33,91,010/-</i>
<i>Profit on contracts and sub contracts @2.22%</i>	<i>12,24,101/-</i>
<i>Total</i>	<i>1,46,15,111/-</i>
<i>Less: Income declared</i>	<i>98,00,250/-</i>
<i>Addition</i>	<i>48,14,861/-</i>

The A.O. has noticed that the income' returned Rs.98,00,250/-, includes income' from contract business of Rs.75,45,428/- and income from other sources on account of bank FD interest and I.T. Refund of

Rs.22,54,821/-. The, A.O. was of the opinion that the income from business .has been offered to tax by the appellant during assessment proceedings as per the above working filed by the appellant during assessment proceedings at Rs.1,46,15,111/- which does not include income from other sources mainly on account of bank FDR interest. The A.O. had noticed that the said income from other sources which was also deducted as income returned from the business income offered to tax by the appellant of Rs.1,46,15,111/- while arriving at addition to income returned. In view of the above facts, the AO had held that there is mistake apparent from record that the income from other sources of Rs.22,54,821/- was remained to be assessed in the assessment order u/s.143(3) dated 22.08.2012. The AO has accordingly made addition of Rs.22,54,821/- in the order passed u/s.154 of the Act.”

4. That during the course of appellate proceedings, the assessee contended that the specific amount of Rs.48,40,200/- was offered to tax as agreed addition to buy peace of mind and to co operate with the Department. The assessee further claimed that while agreeing for the assessed income at Rs.1,46,15,111/-, the amount of Rs.22,54,821/- was considered in the said amount. Therefore, the impugned amount could not be separately added u/s.154 of the Act. The CIT(Appeal) on this issue has observed as follows:

“8. I have carefully considered the facts of the case and rival contentions. On perusal of the same it has been noticed that the AO has held that the net profit @14% offered to tax by the appellant during assessment proceedings on contract receipts and net profit on sub contracts receipts offered to tax @2.22% works out to Rs.1,46,15,111/- which does not include income from other sources on account of interest on fixed deposits of Rs.21,79,112/- and interest on I T refund Rs.75,709/-. On the other hand the appellant has contended that the addition of Rs.48,14,861/- was agreed after considering income from other sources of Rs.22,54,821/-. However, in view of the computation of agreed addition, the contention of the appellant cannot be accepted. The said computation submitted by the appellant to the AO is as under :

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Total Contract receipts</i>	<i>15,07,89,759/-</i>
<i>Less. Contracts and sub contracts awarded</i>	<i>5,51,39,691/-</i>
<i>Balance</i>	<i>9,56,50,068/-</i>
<i>Profit @14% on own contracts</i>	<i>1,33,91,010/-</i>
<i>Profit on contracts and sub contracts @2.22%</i>	<i>12,24,101/-</i>
<i>Total</i>	<i>1,46,15,111/-</i>
<i>Less: Income declared</i>	<i>98,00,250/-</i>
<i>Addition</i>	<i>48,14,861/-</i>

In the above computation the profit from contract business was offered to tax at Rs.1,46,15,111/- which does not include income from other sources Rs.22,54,821/-. Therefore, the contention of the appellant is rejected.

9. In the result, the appeal is dismissed.”

5. We have perused the relevant documents on records specifically assessment order, rectification order u/s.154 of the Act and the order of the Ld. CIT(Appeal) confirming the said rectification order wherein the addition of Rs.22,54,821/- was confirmed. It is noticed that the assessee filed return declaring total income of Rs.98,00,250/-. A copy of Computation of income is available at Page 1 of the paper book, which depicts Income from business at Rs.75,45,429/- and Income from other sources (FDR interest) at Rs.22,54,821/-. During the assessment proceeding, the AO pointed out certain infirmities in the Business income as recorded at para 5.2 of the order, such as, sub-contracts were not properly backed by evidence; no inventory maintained for Opening stock, WIP and Closing stock; and discrepancies in expenses vouchers. The assessee agreed with such shortcomings and agreed for Business income at Rs.146 crore and odd determined by taking profit rate of 14% on own contracts and 2.2% on sub-contracts. A copy of the assessee's letter agreeing with such amount of Business income has been reproduced at page 5 of the assessment order giving figure of Rs.1,46,15,111/-. Thereafter, the assessee reduced the declared income of Rs.98,00,250/- to work out additional income Rs.48,14,861/-. The Assessing Officer, at the time of computation of total income started with the figure of income declared as per return at Rs.98,00,250/- and thereafter, added Rs.48,14,861/-, being the additional income, thereby determining total income at Rs.1.46 Crore. It is pertinent to

note that the assessee agreed for Business income from contract receipts at Rs.1.46 crores, which was independent of income from bank interest at Rs.22.54 lakhs that was declared by the assessee under the head Income of other sources. Thus, the Assessing Officer in the assessment order inadvertently adopted Business income of Rs.1.46 Crores as Total income, which had the effect of excluding Income from other sources at Rs.22.54 lakhs, which was independently offered by the assessee in its return of income and was not a subject matter of any dispute. It is this mistake which the Assessing Officer rectified in the current proceedings u/s.154 of the Act by also including Income from other sources amounting to Rs.22.54 lakhs in the total income, which was earlier omitted to be included in the original assessment order. In our considered opinion, it is a clear-cut case of the AO carrying out rectification of a glaring and patent mistake committed in the original assessment order. By no standard, it can be construed as a debatable point amenable to two views. We, therefore, uphold the impugned order.

6. In the result, **appeal of the assessee is dismissed.**

Order pronounced on 14th day of December, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th December, 2020.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

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		Date	
1	Draft dictated on	11.12.2020	Sr.PS/PS
2	Draft placed before author	11.12.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		