

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No. 179/Agra/2018
(ASSESSMENT YEAR-2014-15)**

M/s Rajveer Singh Yadav Contractor, ChatiaAjmat Ali, Etawah. PAN:AAGFR4692B. Assessee)	Vs.	ITO- 2(2) (5), Etawah.. (Revenue)
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Assessee by	ShriAnurag Sinha, AR
Revenue by	Shri Mazhar Akram, Sr. DR.

Date of Hearing	19.01.2021
Date of Pronouncement	27.01.2021

ORDER

Per, Bench.:

The present appeal is filed by the assessee feeling aggrieved by the order of Id. CIT(A), dated 30.11.2017 for Assessment Year 2014-15.

“1. *BECAUSE, the authorities below while framing the assessment under section 144 of the Act and sustaining the addition made therein was*

highly unjustified in discarding the past history of the 'appellant'.

2. *BECAUSE, while doing so the Ld 'CIT(A)' erred in law in confirming ad-hoc disallowance @ 7.5% aggregating to Rs. 47,80,313/- on trading expenses overlooking the fact that never ever in past assessee has been assessed at such exorbitant rate of Profit which is not real in the business of Contract for civil construction.*

3. *BECAUSE, while confirming the addition the Ld CIT(A) was highly unjustified in confirming ad-hoc disallowance of Rs. 47,88,313/- ignoring the fact on records that Audit Report stood brought on records of the AO as such existence of Books of Accounts cannot be denied. ' .*

4. *BECAUSE, the 'appellant' denies levy of interest under section 234B of the Act as the Income of the assessee is subjected to TDS.*

5. *BECAUSE, while making the assessment the authorities below made various observations/ conclusions which are contrary to facts available on records. While making the addition submission made and evidences filed have been rejected arbitrarily. ,*

6. *BECAUSE, the order appealed against is arbitrary, illegal, contrary to the facts, material on record, law and principles of natural justice.*

7. *The 'appellant' reserves his right to add, delete, modify, alter or substitute any or all the grounds of appeal."*

- 1 Assessee is a civil contractor who is carrying out construction work, mainly for overhead tanks for the Government Departments. Assessee has filed his return declaring income of Rs.9,84,200/-.
- 2 During the course of assessment proceedings, In spite of various opportunities provided by the AO, assessee did not file complete details of his accounts and various expenses and hence the income was assessed at Rs.67,82,510/-.
3. Aggrieved by such addition in total income of the assessee, assessee has filed this appeal with the following grounds of appeal:-

"1. Because the assessment order is bad in law and facts on record.

2. Because Ld. AO disallowed expenditure on adhoc basis without pointing any specific defect.

3. Because the learned AO added Rs.10,10,000/- as income under the head Profits and Gains while it was duly disclosed sundry debtors in balance sheet.

4. Because past history of assessment u/s 143(3) was a/so ignored while making this assessment.

5. Because the assessee appellant craves leave to add, alter or delete any grounds of appeal."

4. During the course of appellate proceedings, the assessing officer had as the assessee to file the documents in support of the expenditure incurred by the assessee. However despite the opportunity granted by the assessing officer, assessee did not file any details in support of grounds of appeal taken. As the assessee failed to comply the direction of the assessing officer despite opportunities granted by the assessing officer, the case of the assessee was decided on the basis of the documents available on record.

5. It is seen that AO has made this addition observing as the following:-

"On the dale fixed for hearing on 20/09/2016 no compliance was made by the assessee. The authorized representative of assessee attended only on OS/12/2016, but filed incomplete books of accounts and details, in which the most of specific queries of notice v/s 142(1) dated 09/09/2016 were not satisfied. The assessee couldn't produce any bills/vouchers, purchase registers and copies of ledger accounts and other relevant evidences in respect of expenditures made for purchases of materials of Rs.4,74,23,200/ labour and rent payments of Rs. 1,15,93,283/- and establishment and selling/admin expenses of Rs. 48,27,581/-. Further, the assessee couldn't produce cash book, list of suppliers of materials and ledgers to verify the quantum of goods purchased and details of payments/expenditure made to labours etc., confirmation of sundry debtor ofRs. 10,10,000/-. Regarding description of work, the assessee vide reply dated 08/12/2016 stated only

that "it has carried on civil contract works for the different contractee department. The work for Jal Nigam were in respect of building construction works, overhaul tanks aggregating to Rs.3,90,38,248/- out of total contract receipts of Rs.6,63,56,077/- but the assessee neither furnished any details of supplier of material and evidences of purchases of material used in contract works, measurement of work completed, site addresses nor submitted any work and actual expenditure incurred thereon. The assessee was repeatedly asked vide aforesaid notices to file complete bill/vouchers, evidences and explanation to verify the genuineness & allow ability of such expenses/payments towards purchases and selling & admin expenses etc. but if was failed to produce the same during assessment proceedings. However, copies of ledger account of some expenditure were produced adequate but it were not adequate to substantiate his claim of expenditure and payment debited in P & L account., it is seen that major expenditure were made in cash, which were not supported by vouchers, stock registers and cashbook etc. The assessee furnished copies of bank account statements with the handwriting narrations, which cannot be treated as genuine in absence of proper evidences. It is very surprising to see that the assessee furnished some old copies of contract bonds of previous years with its reply to mislead the facts during assessment proceedings in his case. The receipts (as per some copies of form nos. 16A) are, however, looking to the contractual receipts in nature, but the in absence of supporting evidences, the work

done/completed by the assessee during the year is not verifiable and, hence, related expenses are also not verifiable.

The details and explanation filed by the assessee were examined. In absence of stock register, list of payments, adequate & proper evidences of the expenses, the purchases of material and closing stock (work in progress) are not verifiable though these are not deniable as a whole looking to the nature of payment 'business reflected in copies of form no. 16A and some contract bonds produced by the assessee. No evidence of payment of royalty, sales tax and cess were submitted. Therefore, in the given circumstances and looking to the quantum of turnover, I hereby disallow a 7.5% amount out of the questioned expenditure claimed by the assessee in P & L account as under:-

<i>S. No.</i>	<i>Expenditure item</i>	<i>Amount claimed (Rs.)</i>	<i>Amount disallowed (7.5%) (Rs.)</i>
<i>i.</i>	<i>Purchase of material (PVC, grits, cement, mauram etc.)</i>	<i>4,74,23,200</i>	<i>35,56,740</i>
<i>ii</i>	<i>Labour and rent etc. payment.</i>	<i>1,15,93,283</i>	<i>8,69,504</i>
<i>iii</i>	<i>Establishment, selling & admin expenses.</i>	<i>48,27,581</i>	<i>3,62,069</i>
	<i>Total</i>	<i>6,38,44,064</i>	<i>47,88,313</i>

Thus, an amount of Rs. 47,88,313/- is being disallowed and is added back to the income of assessee firm. (Addition of Rs.47,88,313/-)

6 Appellant during the course of appellate proceedings before the Commissioner, did not make any compliance and no details in support of any grounds of appeal were filed by him and hence, the case was being decided on merits.

7. Feeling aggrieved by the order passed by the assessing officer, assessee preferred appeal before CIT (A). The learned CIT had decided the grounds raised by the assessee in the appellate proceedings.

8. At the outset the Id AR had submitted that one more opportunity be granted to the assessee for producing the documents for proving the case of the assessee. It was also submitted that the NP Rate the subsequent year four also required to be considered by the revenue authorities for the purposes of determining the profit of the assessee.

9. On the other hand the CIT DR, at we vehemently oppose the granting of fresh opportunity of hearing to the assessee. He had submitted that the assessee has not given any plausible reason for not filing the document before the revenue authorities, therefore the assessee is not entitled to fresh hearing.

10. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the

course of hearing by both the parties. A perusal of the impugned order confirms the fact that the CIT(A)/ AO decided the case of the assessee on the basis of the material available on record and have not considered the past or subsequent year history of the profit earned by the assessee. Before us the assessee had shown the reasonable cause for non submission of documents before the Commissioner as well as before the assessing officer.

Taking into account the facts and circumstances of the matter and in the interest of substantial justice, we concur with this plea of assessee for sending back the matter to the file of CIT(A). As it is highly unlikely that the assessee would intentionally or deliberately not produce the documents before the revenue authorities, as this would cause immense harm to his own interests. Ultimate aim of the assessment by the revenue authorities is to collect correct taxes due from the assessee.

11. In the light of the above we set aside the order passed by the Commissioner and remand the matter to CIT (A). The CIT(A) is directed to pass fresh speaking order, in terms of direction given herein above, after following the principle of natural justice and affording the opportunity of hearing to the assessee. We may mention that it will be open for the assessee to take all the grounds and additional grounds as the assessee deem appropriate before the Commissioner (A). Needless to add, the CIT(A) shall afford the assessee adequate opportunity of being heard and to file details/submissions required, which shall be duly considered before

deciding the issues. The assessee is also directed to comply with and attend the hearings before the CIT(A) and shall not take undue adjournment in the matter. It is expected from the CIT(A) to decide the remand proceeding preferably within a period of six months from the date of receipt of this order. Consequently, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27/01/2021.

**Sd/-
(DR. M.L. MEENA)
ACCOUNTANTMEMBER**

**Sd/-
(LALIET KUMAR)
JUDICIALMEMBER**

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private Secretary
ITAT, Agra