

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4163 /Del/2016 [By assessee]
AND ITA. No. 4679 (Del) of 2016 [By Department]
(Assessment Years: 2012-13 & 2009-10)

Shri Brij Gopal Chauhan, C/o. Shri K. R. Manjani, K-98, First Floor, Lajpat Nagar-II, New Delhi – 110 024. PAN: AHFPC5855M	Vs .	Income Tax Officer, Ward : 60 (4), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Tarun Aswani, Adv.;
Revenue by:	Shri Ashok Kumar, Sr. D.R.;
Date of Hearing	16/03/2021
Date of pronouncement	16/03/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

ITA. No. 4163 (Del) of 2016 :

1. This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-19, New Delhi, dated 3.06.2016 for assessment year 2012-13 raising following grounds of appeal:-

“ The ld. CIT (Appeals) has erred on facts as well as in law in estimating income at Rs.72,38,608/- against income of Rs.5,30,660/- shown under Section 44AD which is also supported by return filed under VAT. The estimate of the CIT (A) being without any material, ignoring the correct position of the case i.e. neither books of accounts are kept nor auditing was done and returns were even farzi for taking loan from bank. “

2. The brief facts of the case are that assessee is assessed by Income Tax Officer, Ward 60 (4), New Delhi. The assessee filled his return of income on 30.09.2009 declaring a total income of Rs. 5,30,660/-. Assessee revised the

return on 19.01.2013 at the same income. It is pertinent to note that assessee is an Individual and runs a proprietary concern in the name of V.K. Chauhan Paints & Sanitary Stores. He is engaged in the business of trading of hardware and sanitary stores. Now the business is closed. Ld AO, based on the return of income for assessment year 2010-11, the case of the assessee was selected for scrutiny. In assessment year 2010-11 few additions were made in the hands of the assessee. Such additions were by increasing the sale by Rs.50 lakhs and un-secured loan of Rs.1.89 crores under Section 68 of the Income Tax Act, 1961 (the Act). Thus, in this case for this year also the assessee received notices. The assessee did not produce any supporting bills and vouchers along with the books of accounts. The ld. Assessing Officer found that closing stock of the last year were shown at Rs.60lakhs lower than the opening stock of this year. Therefore, the assessee was questioned. The assessee submitted that the accounts prepared by somebody for obtaining bank loan and are bogus. This fact was also admitted by the assessee in survey and CA of the assessee. Assessee submitted that figure of the sales are duly supported by documentary evidence, VAT returns. Therefore, the figures in the return of income are in wide varainace with that and figures of return of income are bogus. Assessing Officer made an addition of Rs.60 lakhs. During the course of assessment proceedings assessee filed revised return of income which was not accepted by the AO as it was filed beyond the prescribed time. The books of accounts of the assessee were rejected and provisions of Section 145(3) of the Act were invoked. Consequently, 20% of all the expenditure were disallowed amounting to Rs. 12,64,822/-. An addition of Rs. 46,26,000/- was made for investment in purchase of house property. Assessee made cheque payment of Rs. 10 lakhs and cash payment of Rs.33,35,000/- for purchase of above property . Assessee submitted that the above payment of Rs. 46,26,000/- is made from over-draft account. This contention was rejected by the Assessing Officer as no further information was filed. Further addition of Rs. 8,000/- was made by disallowance under Section 80C of the Act. Thus the total income of the assessee was assessed at Rs. 1,24,29,480/- against the returned income of Rs. 6,38,660/-.

3. Assessee preferred appeal before the ld. CIT (Appeals) contesting that the accounts prepared by the Chartered Accountant are bogus. The ld. CIT (Appeals) noted that assessee has shown turnover of Rs. 1,44,72,165/- and has not been able to prove the variation in the turnover in respect of revised return of income and the accounts. As the ld. CIT (A) for assessment year 2010-11 in assessee's own case adopted a profit rate of 5%, same was also applied in this appeal and addition of Rs. 72,38,608/- was sustained. The ld. CIT (A) deleted the addition of Rs. 46,26,000/- for the reason that addition of business income sustained by him of Rs. 72,38,608/- was higher than the investment. Thus, the appeal of the assessee was allowed.
4. Assessee aggrieved with that order preferred this appeal.
5. The ld. AR submitted that the assessee has shown an income of Rs. 5,30,660/-, but the ld. CIT (A) has estimated the income at Rs. 72,38,608/- without any basis. The ld. AR submitted that addition has been made based on the order of the ld. CIT (A) for assessment year 2010-11. He submitted that the matter for AY 2010-11 travelled to ITAT in ITA. 1843 (Del) of 2015, which was decided on 27.09.2018. Vide para No. 9 of the order the matter is set aside to the file of the AO. He, therefore, submitted that this addition has no legs to stand. He otherwise submitted a comparative chart of net profit for four years. He also submitted that the statement of the Chartered Accountant, Shri Sandeep Kumar clearly shows that he has prepared the books of accounts of the assessee and has also signed the tax audit report for assessment year 2010-11 without examination of the books of accounts and figures there in are bogus. He, therefore, submitted that the addition deserves to be deleted. He further referred to the order of the Addl. Chief Metropolitan Magistrate, Delhi, dated 11.04.2015 wherein the facts of the case are explained in detail. He relied upon those facts.
6. The ld. DR vehemently objected to the arguments of the ld. AR and exceedingly relied upon the findings of the ld. AO and CIT (Appeals). However, he submitted that the order of the ld. Assessing Officer for assessment year 2010-11 had been set aside by the co-ordinate bench to the file of ld AO and, therefore, out-come of the said order by the AO needs to be considered.

7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The addition is sustained by the Id. CIT (A) based on the findings of the Id. CIT (A) in assessee's own case for assessment year 2010-11 wherein the profit @ 5% on the turnover was estimated. For that year the assessee as well as the Revenue both were in appeal. The co-ordinate bench in ITA. No. 1843 (Del) of 2015 filed by the Assessing Officer and Cross Objection No. 233 (Del) of 2016 filed by the assessee were decided on 27.09.2018. In para No. 8 the co-ordinate bench held that assessee should be given an opportunity to substantiate evidence to the satisfaction of the Assessing Officer regarding the turnover and expenses with respect to the profit and loss account and the balance sheet as it as stated that those were farzi version of accounts. In para No. 9 considering the totality of the facts of the case the matter was restored back to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case directing the assessee to produce the books of accounts and audit report failing which the Assessing Officer shall pass an appropriate order as per law. In the present case the addition is also based on the order of the Id. CIT (Appeals) for assessment year 2010-11. This order has now been restored back to the Id AO for that year. Therefore, looking to the facts that when additions are confirmed on the basis of the order of Id CIT (A) for earlier years which has already been sent back to the Id AO for fresh decision, there is no reason that why this year should also not be restored back to the file of the Id AO for fresh assessment . SO, we also set aside this appeal with similar direction to the file of the Assessing Officer. Needless to say that the assessee is to show correct income with cogent material before the Assessing Officer. Accordingly, the solitary ground of appeal of the assessee is allowed with above direction.
8. In the result, appeal of the assessee is allowed for statistical purposes.

ITA. No. 4679 (Del) of 2016 [AY 2009-10]

9. This appeal is filed by the Department against the order of the Commissioner of Income Tax (Appeals)-19, New Delhi, dated 3.06.2016 for assessment year 2009-10, raising the solitary ground of appeal wherein the Id. CIT (Appeals) restricted the addition of 5% of gross sales. In this case

the total income of the assessee was assessed at Rs. 2,02,18,200/- and the Id. CIT (Appeals) deleted the addition of Rs. 1,97,13,430/-. The Id. CIT (Appeals) dealt with this issue in para Nos. 8 to 10 as under:-

“ 8. Ground Nos. 2 & 3 are in respect of addition of Rs. 1,97,13,430/-. As mentioned above, the return for Assessment Year 2009-10 was filed manually and columns in the return were filled only in respect of debtors, stock-in-trade, cash balance, gross receipts, gross profit and net profit had been filled up. Apparently, this meant that appellant was not maintaining any books of accounts and the figures were given on estimate basis. The Assessing Officer has placed reliance on the accounts furnished for Assessment Year 2010-11 to show that opening stock had been shown at Rs. 2,01,23,560/-. During the course of assessment, the Assessing Officer has not disputed the turnover or the expenses of the appellant. He has not even doubted the cash balance and the figure of sundry debtors. He has only added the quantum of discrepancy in the opening and closing stock to the in- trade shown in the return of income as on 31 -03-2009.

9. In this context, it is pertinent to note that in the Assessment Year 2010-11, the appellant went in appeal before the CIT (A). The CIT (A) while deciding the case held as under:-

“ 7. The appellant himself admits that his earlier Balance Sheet and Profit & Loss Account are bogus and the books of accounts were never produced before the Assessing Officer during assessment proceedings. Therefore, I am of the view that the appellant's books of accounts should be rejected under section 145(3) of the Income Tax Act, 1961 and appellant's income from business should be estimated. Since the assessment order says that the appellant's sales was Rs. 3,16,93,527/-, I am of the view that appellant's net profit can be reasonably estimated at 5% of the above sales considering the nature of appellant's business and the fact that he was planning to expand his business by obtaining bank loans. Therefore, the profit of the appellant from business is estimated at Rs. 15,84,676/- (5% of 3,16,93,527/-) and the additions/ disallowance made by the Assessing Officer is deleted. The appellant's income is to be taken as Rs. 15,84,676/- instead of Rs. 6,05,122/- taken in the computation of the assessment order based on the net profit shown in the Profit & Loss Account filed along with the return of income. No relief for deduction under section 80D or 80G is to be granted as no evidence regarding these payments were submitted by the appellant even during the appellate proceedings. Thus, the appellant gets a relief of Rs. 2,40,59,190/- (assessed income of Rs. 25643866 - 1584676) and only the addition of Rs. 15,84,676/- made by the Assessing Officer is sustained. Therefore, the ground of appeal is partly allowed. ”

10. The order of my predecessor, therefore, clearly show that he had rejected the books of accounts and estimated the profit as a percentage of total turnover of the appellant. He had, therefore, not accepted the figure of opening stock or the closing stock as shown in the Profit & Loss Account of the appellant for Assessment Year 2010-11, where the opening stock figure for the next year has not been taken into consideration for estimation of the profit of the next year, it would be incorrect on the part of the Assessing Officer to consider that figure as the closing stock for the current year. Furthermore, he has not disturbed the trading results of the appellant, which showed a turnover of Rs.9,45,132/-. He has not even examined the source of that stock nor such a huge amount of stock was found during the course of survey conducted at the premises of the appellant. Considering the fact of the case, the addition is deleted. Both these grounds of appeal are allowed. “

10. The Assessing Officer aggrieved, therefore, is in appeal.
11. The Id. DR vehemently supported the order of the Id. Assessing Officer whereas the Id. AR supported the order of the CIT (Appeals).
12. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the return of income the assessee has filled up the figures only with some of the items, therefore, it is apparent that no books of accounts were maintained. During the assessment proceedings, the Assessing Officer did not dispute the turnover or the expenses as well as the cash on hand and amount of debtors. The only addition was with respect to the discrepancy in the opening stock. In assessment year 2010-11 the Assessing Officer rejected the books of accounts and made the addition whereas in the impugned year he has not disturbed the trading results of the assessee which has turnover of only Rs.9,45,132/-. The Assessing Officer has merely added the difference in the opening stock as well as the closing stock. The stock of the assessee as on 1.04.2009 was Rs. 2,01,23,560/-. However, the stock as on 31.03.2009 was shown at only Rs. 4,10,130/-. Therefore, the assessee has shown excess opening stock of Rs. 1,97,13,430/-. The Assessing Officer also did

not care to consider that whether the assessee is having the above stock as actual stock with the assessee and if so what is the source of investment for the above stock. The Assessing Officer has not even examined the source of stock nor was such stock found during the course of survey on 17.09.2013 and 29.09.2013. No purchase vouchers or details were also found during the course of survey. In view of this, we do not find any infirmity in the order of the Id. CIT (Appeals) and thus, the solitary ground of appeal of the Id. Assessing Officer is dismissed.

13. Accordingly, the appeal of the assessee for assessment year 2012-13 is allowed, for statistical purposes with direction contained therein and appeal of the Assessing Officer for assessment year 2009-10 is dismissed.

Order pronounced in the open court on 16.03.2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 16.03.2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	16.03.2021
Date on which the typed draft is placed before the dictating member	16.03.2021
Date on which the typed draft is placed before the other member	16.03.2021

Date on which the approved draft comes to the Sr. PS/ PS	16.03.2021
Date on which the fair order is placed before the dictating member for pronouncement	16.03.2021
Date on which the fair order comes back to the Sr. PS/ PS	16.03.2021
Date on which the final order is uploaded on the website of ITAT	16.03.2021
date on which the file goes to the Bench Clerk	16.03.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	