

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G": DELHI
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER
ITA.No.986/Del./2017
Assessment Year 2013-14

Late Sh. Sohan Lal Aggarwal, House No. 368, Sector-15, Part-1, Gurgaon. PAN No. AACPL1555H	vs.	ACIT Circle 62(1), E-2 Block, Pratyakash Kar Bhawan, Civic Centre, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Sh. Rajesh Mahna, Adv.
For Revenue :	Sh. Prakash Dubey, Sr.DR

Date of Hearing :	09.08.2021
Date of Pronouncement :	11.08.2021

ORDER

PER MADHUMITA ROY, J.M.

The instant appeal is directed against the order dated 29.12.2016 passed by the Ld. CIT(Appeals)-20, New Delhi arising out of the order dated 18.02.2016 passed by the Ld. ACIT, Circle -62(1), New Delhi u/s 143(3) of the Income Tax

Act, 1961 (hereinafter referred to as “the Act”) for AY 2013-14.

2. The assessee a proprietorship firm running the business of civil contractor filed its return of income on 28.10.2013 declaring income at Rs. 22,02,250/- which was processed u/s 143(1) of the Act. Notice u/s 143(2) dated 22.09.2014 was served upon the assessee and the said assessment was finalized with certain additions including addition of Rs. 49,71,570/- as undisclosed income which was in turn restricted to Rs. 48,36,917/- by the Ld. CIT(A). Hence, the instant appeal before us.

3. During the course of assessment proceedings, it was found by the Ld. Assessing Officer that as per the ITS details the gross receipts of the assessee is Rs. 12,43,51,107/-, whereas as per the profit and loss account the same is Rs. 11,93,79,537/-. The assessee was asked to reconcile the difference in receipts amounting to Rs. 49,71,570/-. Since, no plausible explanation in this regard was provided by the assessee, the said amount of Rs. 49,71,570/- has been determined as the undisclosed

income of the assessee and added to the total income of the assessee.

4. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

4.1 The facts culled out from the order passed by the Ld. Assessing Officer is this that the Assessing Officer ultimately added Rs. 49,71,570/- to the gross receipts filed by the assessee as per profit and loss account on account of mismatch of ITS details as per 26AS which showed gross receipts at Rs. 12,43,51,107/- including FDR interest of Rs. 1,34,653/-. This particular interest was separately shown in ITR under the head "income from other sources". Apart from that the difference in assessee's profit and loss accounts and ITS details of Rs. 48,36,917/- is due to the fact that at the time of filing of ITR TDS of Rs. 48,36,917/- which is one percent of gross receipts was not reflecting in 26AS and neither Municipal Council who has deducted TDS on the said receipts had issued the assessee any TDS certificate as the case made out by the assessee before us

and before the first appellate authority as well. At the time of scrutiny the assessee was in *bonafide* belief that these receipts and TDS does not belong to him and thus, it had not claimed these TDS in its ITR. However, the copy of original 26AS available with the assessee reflecting the gross receipt of Rs. 11,93,79,537/- has already been submitted by the assessee to the Ld. Assessing Officer. According to the assessee the Revenue was not justified to treat Rs. 48,36,917/- as the income of the assessee without appreciating that the rate of profit at the most which could be brought to tax instead of the entire difference in the contract receipts. The Assessing Officer should have added back not the total receipts treating as income but only the profit ratio @ 1.73% as was in the last three years as also the prayer made before the First Appellate Authority. It is also a fact as appearing from the order passed by the First Appellate Authority that during the filing of ITR the appellant was seriously ill and ultimately expired on 21.07.2014. During that period he was totally dependent on the employees and labour for all his work. Ultimately the

Ld. Counsel appearing for the assessee agreed to the addition @ 5% of the net profit when the matter was heard by us. However, the Counsel for the Revenue supported the order passed by the authorities below.

5. It is a settled proposition of law that in case of difference between the assessee's books of account and as per the TDS certificate, then on the said difference, the only embedded portion of the profits is to be taken into consideration and addition is to be made thereon. There are number of judicial pronouncements by which the principle to this effect has been laid down that the total sale cannot represent as the profit of the assessee. The net profit rate has to be adopted and once the net profit is adopted it cannot be said that there is perversity of approach. Thus, taking into consideration the entire aspect of the matter, we do not find any justification in making the addition of the entire turnover to the income of the assessee. Having regard to the peculiar facts and circumstances of the case, we find it justified to restrict the addition at 5% of the net profit on the gross receipt of Rs. 11,93,79,537/-. The Ld.

Assessing Officer is directed to grant relief to the assessee as on the above terms.

6. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Delhi, Dated 11.08.2021

*Kavita Arora, Sr. PS

Copy to

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

// BY Order //

Assistant Registrar, ITAT Delhi Benches :
Delhi.