

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. Nos: 801 & 802/Ahd/2019
(Assessment Years: 2012-13)**

ACIT, Central Circle-3(3), Ahmedabad	V/S	M/s. Johnson Associates, Sahjanand Arcade, Opp. Helmet Circle, Helmet Cross Road, Ahmedabad- 380014
(Appellant)		PAN No. AAGFJ0010R (Respondent)

**Appellant by : None
Respondent by : Shri Purashottam Kumar, CIT/DR**

(आदेश)/ORDER

Date of hearing : 13-10-2021
Date of Pronouncement : 29 -10-2021

PER MAHAVIR PRASAD, J.M.

1. These two appeals have been filed by the Revenue are directed against the order of the Ld. CIT(A) vide Appeal No. CIT(A)-3/DCIT, Circle-3(3)/539/2017-18 order

dated 22/02/2019 arising out of assessment order dated 26/03/2015. The Revenue has taken following grounds of appeal:

- 1) *The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs 1,16,63,169 /-made by the Assessing Officer on account of estimation of net profit @8% of sales.*
- 2) *The Ld CIT(A) has erred in law and on facts in deleting the addition of Rs 2,04,61,000/-made by the Assessing Officer on account of unexplained credits.*
- 3) *On the facts and circumstances of the case, Ld CIT(A) ought to have upheld the order of the Assessing Officer.*
- 4) *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

2. Facts of the case are that assessee is in the business of work contract and sales of ready mix concrete etc.
3. On verification of the P&L a/c, it is seen that you have shown sales of Rs. 14,57,89,636/- against which net profit is shown at* a loss of Rs. 1,97,89,817/-. It is also seen that the nature of your business is works contract (Sales of Ready mix concrete) as per the Audit Report furnished. You have claimed huge expenditure by way of Direct Expenses, Rent, Expenses Repairs and Maintenance, Misc. Expenses, Interest Expenses other Administrative charge, etc for which no evidences and supporting evidence has been submitted. It is further seen in similar business the N.P is around 8% to 10%. Further even as per provisions of sec. 44AD of the Act, 8% net profit is considered reasonable. Considering the above facts and as no evidences of the expenditure claimed by you has been given you are required to show cause why the net profit on account of the works contract should not be taken at Rs. 1,16,63,169/- (being 8% of the sales of Rs. 14,57,89,616/-) and taxed accordingly.
4. On verification of the P&L a/c submitted, it is seen that you have received new unsecured loans as under::

<i>Sr. No.</i>	<i>Name</i>	<i>Amount (Rs.)</i>
1.	<i>Arvind C. Shah</i>	<i>10,00,000</i>
2.	<i>Jai Shree Developers</i>	<i>11,00,000</i>
3.	<i>Reckon Infrastructure</i>	<i>1,83,61,000</i>
<i>Total</i>		<i>2,04,61,000</i>

5. No confirmation in respect of the same has been filed. Neither the PAN nor the complete address of the parties is available on record. You are therefore, required to show-cause why the same should not be considered as unexplained cash credits u/s. 68 of the Act and taxed accordingly.
6. It is pertinent to mention here despite of the fact notices were issued to the assessee but he did not come forward to file his submission and argued the matter before A.O. Therefore, under the circumstances, ld. A.O. had to made best judgment order u/s. 144 r.w.s. 143. And Ld. A.O. made above said two additions.
7. Thereafter assessee first statutory appeal before the Ld. CIT(A) who granted relief to the assessee with regard to ground no. 1 on the basis of that books of account were not rejected by the A.O.
8. As we can see, assessee did not appear before the Ld. A.O. so question of filing of books of account does not arise. So we do not agree with the contention of the Ld. CIT(A). Therefore, in the interest of justice, we set aside this matter back to the file of the A.O. and assessee is directed to file books of account and other relevant

document before the Ld. A.O. Thereafter Assessing Officer shall pass an order in accordance with law.

9. Now we come to ground no. 2 is concerned, In this case also, assessee did not file any detail with the assessing officer though he filed certain details with the Ld. CIT(A) and remand report was also submitted but assessee has not filed the complete details before the Ld. CIT(A) as well. But Ld. CIT(A) granted relief to the assessee. But we do not agree with the finding of the Ld. CIT(A).
10. Thus, in the interest of justice, we set aside this matter back to the file of the Assessing Officer and assessee is directed to file all relevant details with the Ld. A.O. Thereafter shall pass an order in accordance with law.
11. In the result, appeal filed by the Revenue is allowed for statistical purposes.
12. So far ITA No. 802/Ahd/2019 is concerned, the revenue has taken following grounds of appeal:
 1. *The Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs. 1,04,44,713/- levied by the Assessing Officer u/s. 271(1)(c) of the Act.*
 2. *On the facts and circumstances of the case, Ld CIT(A) ought to have upheld the order of the Assessing Officer.*
 3. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*
13. Since the present appeal is a penalty appeal and consequential in nature as connected appeal, we have set aside to the file of the A.O.
14. Thus, in parity with the ITA No. 801/Ahd/2019, this appeal is also set aside to the file of the Assessing Officer to decide in accordance with law.

15. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in Open Court on 29- 10- 2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 29/10/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad