

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2970/Del/2018
(Assessment Year : 2012-13)

DCIT Circle – 2 Noida PAN : AAAAK 7362 C (APPELLANT)	Vs.	KMB-Era Joint Venture C-56/41, Sector – 62, Noida (RESPONDENT)
---	-----	--

Assessee by	Ms. Sunita Singh, CIT-D.R.
Revenue by	Ms. Chinu Bhasin, C.A.

Date of hearing:	12.10.2021
Date of Pronouncement:	02.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 27.10.2017 of the Commissioner of Income Tax (Appeals) – I, Noida relating to Assessment Year 2012-13.

2. Assessee is an Association of Person (AOP) formed for participating in the projects award from Airport Authority of India (AAI) and Delhi Metro Rail Corporation (DMRC), the project related to construction complete civil work, electrification, supply

of material etc. Assessee filed its return of income for A.Y. 2012-13 on 20.09.2012 declaring total income of Rs.80,21,250/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 24.03.2015 and the total income was determined at Rs.12,75,53,200/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 27.10.2017 in Appeal No.30/2015-16/Noida decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds:

- “1. *That the CIT(A) has erred in law and on facts by deleting the addition made by AO without appreciating the fact that the addition was made due to non production of books of accounts and supporting bills/ voucher in respect of project contract expenses.*
2. *The appellant craves to leave, add, alter and amend any of the grounds of appeal on or before hearing.*
3. *That the order of the Learned CIT(A) deserves to be set-aside and the order of the AO be restored.”*

3. AO has noted in the assessment order that assessee did not furnish the books of accounts, bills, vouchers etc and the details of the projects contract expenses. AO noted that since assessee did not furnish the details of the project contract expenses, he disallowed 1/5th of such expenses and thus made a disallowance of Rs.11,95,31,949/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who decided the issue in favour of the assessee by observing as under:

6. *“The Ld Counsel for the appellant submitted that the due procedure prescribed in law to reject the books of accounts and to*

take recourse to the best judgment assessment was not followed by the Ld. A.O. and the appellant was not given any opportunity to defend its position and without following the procedures prescribed in law the Ld. A.O. rejected the books of accounts and estimated the income of the appellant in a unjustified manner.

7. *Per cotra, the Ld. A.O. has admitted that the books of accounts were audited and the audit reports were duly furnished. It is also admitted, in para 2 of the impugned assessment order that the appellant furnished details of its income as called for during various hearings however, the appellant is said to have not furnished the books of accounts, bills and vouchers etc. The Ld. A.O. has noted in para 3 of the impugned assessment order that the appellant did not furnish the complete details and documentary evidences regarding project contract expenses and therefore in the facts and circumstances of the case the Ld. A.O. proceeded to reject the books of accounts and the audited accounts of the appellant and to estimate the income of the appellants at 1/5th of the gross receipts of the appellant.*

8. *The rival submissions are considered.*

9. *The Ld. A.O. has failed to follow the correct procedure as is mandatory under the I.T. Act, 1961. Once, the Ld. A.O. was not satisfied with the conduct of the appellant in furnishing the information and details called for by the Ld. A.O., the Ld. A.O., if it considered to be so necessary, could have assumed jurisdiction u/s. 144 of I.T. Act, 1961 and proceeded to frame the best judgment assessment. However, it is seen that the Ld. A.O. did not choose to assume jurisdiction u/s. 144 of I.T. Act, 1961 and therefore, it cannot be held against the appellant that it failed to comply with the requirements of the Ld. A.O. regarding furnishing the details and other information. Conversely, once there was no circumstances to invoke the provisions of Section 144 of I.T. Act, 1961, the Ld. A.O. could not have estimated the income of the appellant and as the assessment was framed under the provisions of Section 143(3) of I.T. Act, 1961 by disallowing the expenses purely on estimate basis as assessment was to be framed only on the basis of the material on the record of the Ld. A.O. and the Id. A.O. has brought no material on record to justify the disallowance of 20% of the gross expenses purely on estimate basis which in any case could not have been done under the provisions of section 143(3) of I.T. Act, 1961.*

10. It is seen that the Ld. A.O. has referred to no material at all in the impugned assessment order except to the claimed failure of the appellant to furnish the details called for by the Ld. A.O.
11. Either there was material on the record of the Ld. A.O. to frame an assessment u/s. 143(f) or the appellant has not complied with the requirements of the Ld. A.O. to furnish the information called for by the Ld. A.O. and thus calling for the assumptions of jurisdictions u/s. 144 of I.T. Act 1961. Since, the impugned assessment order was framed u/s. 143(3) the appellant cannot be faulted with for not furnishing the details called for by the Ld. A.O. On the other hand, the Ld. A.O. has no material to base its conclusions u/s. 143(3) of I.T. Act, 1961 to disallow 1/5th of the gross expenses on the ground of alleged failure of the appellant to furnish the details called for by the Ld. A.O. as in such a case the Ld. A.O. could have proceeded against the appellant under the provisions of section 144 to frame the assessment in the estimation of the Ld. A.O.
12. The Ld. A.O. is vested with the authority and jurisdiction to reject the books of account of the assessee in case the same is found not to be maintained according to the accounting standards issued by the Central Govt, and thereafter proceed to frame the assessment as per the judgment of the assessing officer. However, the law provides for a specific procedure for rejection of books of accounts and for estimation of the income of the assessee. In the present case, the Ld. A.O. has estimated the income of the appellant but without rejecting the books of accounts of the appellant in so many words though, the effect of the impugned assessment order and estimation of income of the appellant is the same, i.e., rejection of the books of accounts. In any case, the principle of natural justice is a strict requirement in law for rejection of books of accounts and estimation of income.
13. It is seen that the Ld. A.O. has followed none of such prescribed procedure.
14. The Ld. counsel for the appellant stated that the project which formed the subject matter of the impugned assessment order was a running project over several assessment years and the assessment year involved in the impugned assessment order was one of these several assessment years and placed on record the assessment order passed u/s. 143(3) of the I.T. Act, 1961 in case of the appellant for the other assessment years for

the same project wherein the Revenue has accepted the returned income of the appellant and has found nothing wrong with the books of accounts of the assessee. The Ld. Counsel for the appellant therefore, submitted that the impugned assessment order was bad in law and deserved to be deleted.

15. In these facts and circumstances of the case the impugned assessment order is not sustainable in the eyes of the law. The same is therefore, deleted. The appeal of the appellant succeeds and is allowed. The appellant gets corresponding relief.”

5. Aggrieved by the order of CIT(A), Revenue is now before us.

6. Before us, Learned DR supported the order of lower authorities.

7. On the other hand, Learned AR reiterated the submissions made before the lower authorities and further submitted that observations of the AO of non-furnishing of required details is factually incorrect and in support of the aforesaid contention she pointed to the correspondence entered with the AO and the copy of which are placed at Page 131 to 134 of the Paper Book. She therefore submitted that in such a situation no interference to the order of CIT(A) is called for.

8. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the deletion of ad hoc disallowance made by AO. We find that CIT(A) has come to the conclusion that the disallowance of the expenses has been made purely on estimated basis and AO has not brought any material on record to justify the disallowance. He has further noted that if the assessee had

not furnished required details called for by the AO, the AO should have rejected the books of accounts and should have invoked the provision of section 144 of the Act. He noted that the AO has neither rejected the books of accounts nor has framed assessment u/s 144 of the Act. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

9. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 02.11.2021

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 02.11.2021

*PY**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI