

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 6700/Del/2018
(Assessment Year : 2012-13)

Deepak Verma C/o. RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 110 049 PAN No. ACBPV 6389 C	Vs.	ITO Ward – 32(4) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Adv.
Revenue by	Shri Kumar Pranav, Sr. D.R.

Date of hearing:	22.11.2021
Date of Pronouncement:	08.12.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 28.08.2018 of the Commissioner of Income Tax (Appeals)-31, New Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual and proprietor of M/s. Jagdama Steel Corporation and Supreme Contractors. Assessee electronically filed his return of income for A.Y. 2012-13 on 24.09.2012 declaring total income of Rs.5,50,000/-. The case was selected for scrutiny and thereafter assessment was framed under section 143(3) of the Act vide order dated 17.03.2015 and the total income was determined at Rs.87,81,322/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 28.08.2018 in Appeal No.31/17-18/110/15-16 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

“1. (a) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in estimating the net profit at Rs.87,59,848/- instead of Rs.5,28,526/- as declared by the assessee and according made an addition of Rs.82,31,322/- by applying the provisions of section 145(3) and 144 of the Act and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without observing the principles of natural justice.

1(b) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the books of accounts of assessee, more so when same were lost and FIR has been filed by the assessee before the Police Authority.

1(c) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned ex-parte passed by Ld. AO u/s 144 and that too by disregarding the submissions of the assessee and without observing the principles of natural justice.

1(d) That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of

Rs.82,31,322/- on account of estimation of net profit, is bad in law and against the facts and circumstances of the case.

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not considering the request for adjournment dated 23-08-2018 filed by the father of assessee stating therein that the assessee (Sh. Deepak Verma) has met an accident and not in a position to present the case.*
3. *That having regard to the facts and circumstances of the case, action of Ld. CIT(A) is bad in law in observing the wrong fact that surrender made by assessee during the course of assessment proceedings establishes the culprit nature whereas the same was made to buy mental peace.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B, 234C and 234D of the Income Tax Act, 1961.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

4. Before us, at the outset, Learned AR submitted that the AO has made the addition of Rs.82,31,322/- made on account of estimation of income. During the course of assessment proceedings, assessee was asked to produce the books of accounts, bills/vouchers etc., to which AO had noted that assessee did not produce the books of accounts as according to the submissions of assessee, he had lost the books of accounts and in support of it assessee placed copy of FIR filed with the police authorities. Assessee however, produced the audit report and the bank accounts. AO was not satisfied about the correctness/completeness of the accounts of the assessee. AO

noted that gross receipts of Supreme Contractors to be Rs.5,65,73,990/- and M/s. Jagadama Steel Corporation to be Rs.18,25,000/-. In the absence of books of accounts, AO was of the view that genuineness of the accounts was not reliable or it present true picture of the affairs of the assessee. Assessee was therefore issued a show-cause notice and asked to show-cause as to why the books of accounts be not rejected and the profit be computed as per the provision of Section 44AD of the Act @ 8% of the gross receipts which according to AO works out Rs.46,71,919/- as against Rs.5,28,526/- shown by the assessee. Assessee made the submissions which were found acceptable to AO. AO thereafter rejected the books of accounts of the assessee and estimated the net profit at the assessee @ 15% of the gross receipts of Rs.5,83,98,990/- and worked out the profit @ Rs.87,59,848/-. He thereafter granted credit of Rs.5,28,526/- shown by the assessee as his income and thus made an addition the differential amount of Rs.82,31,322/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 28.08.2018 in Appeal No.31/17-18/110/15-16 upheld the action of AO. Aggrieved by the order of CIT(A), assessee is before us.

5. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that though in the show cause notice issued by AO, AO asked the assessee to show-cause as to why the profit not be estimated at 8%, but

thereafter AO without given any further notice, estimated the profit @15%. He therefore submitted that in the absence of any notice for estimating the profits at 15%, the AO could not have proceeded to make the addition by estimating the profit @ 15%. He thereafter fairly submitted that if the profits are estimated @ 8%, the same would be acceptable to assessee.

6. Learned DR on the other hand supported the order of lower authorities and submitted that assessee did not appear before CIT(A) despite various opportunities granted by CIT(A) to substantiate his case and in such a situation no interference with the order of CIT(A) is called for.

7. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the estimation of profit. It is an undisputed fact that assessee did not produce the books of accounts and bill vouchers before the AO and in such a situation, AO had no other option but to estimate the profit of the assessee. It is however an undisputed fact that in the show cause notice, AO asked the assessee to show casue as to why the profits be not estimated @ 8% of the gross receipts but however the AO finally estimated the profits @ 15% of the gross receipts. We find that no opportunity was given to the assessee for explaining his stand with respect to the estimation of profit @ 15% of the gross receipts. Considering the totality of the aforesaid facts, we are of the view that the AO

was not justified in estimating the profit @15% in the gross receipt. Before us, Learned AR has submitted that the estimation of profits @ 8% of gross receipts as specified in show-cause notice by AO would be acceptable to assessee. In such a situation, we direct the AO to estimate the profits on the basis of 8% gross receipt as per the show-cause notice issued by him to the assessee. We thus direct the AO accordingly. **Thus the ground of the assessee is partly allowed.**

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08.12.2021

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

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

Date:- 08.12.2021
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI