

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

BEFORE SHRIR. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 197/Del/2019
(Assessment Year: 2013-14)

Bhandari Builders P. Ltd,
B-10, Bhandari House, 91-
Nehru Place, New Delhi
PAN: AAACB2570R
(Appellant)

Vs. ITO,
Ward-4(4),
New Delhi
(Respondent)

Assessee by : ShriNiren Gupta, CA
Revenue by: Shri M. K. Pandey, Ld. Sr. DR

Date of Hearing 12/04/2022
Date of pronouncement 29/04/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The Assessee has preferred the instant appeal against the order dated 30.11.2018, impugned herein, passed by the Ld. Commissioner of Income-tax (Appeals)-2, New Delhi (in short 'Ld. Commissioner) u/s 250(6) of the Income-tax Act, 1961 (in short "the Act"), for the assessment year 2013-14, whereby the assessment order passed by the AO u/s 143(3) of the Act was upheld.

2. Brief facts relevant for adjudication of this appeal are that the Assessee company had filed its return of income at Rs. 1,44,960/- on 18.09.2013, which was processed by the AO u/s 143(1) of the Act. During the course of assessment proceedings the Assessee was asked to file the details of business income, property income and other income

etc. , in response to which the Assessee produced the relevant documents. Thereafter, on perusal of the same , a show cause notice dated 25.02.2016 along with notice u/s 142(1) was issued to the Assessee which was also complied with by the Assessee by filing reply with documents. Thereafter, on consideration of the documents and reply of the Assessee it was observed by the AO that main source of the income of the Assessee is from house property against which the Assessee has claimed deduction @30%. Further, the expenses claimed by the Assessee is not looking in one to one relationship with the income earned by the Assessee for the relevant assessment year. Therefore, the Assessee was called for the books of account and vouchers which have been produced by the Assessee. The AO after perusing the same, find difficult to understand the authenticity of the books and relevant records and therefore rejected the books of account by holding that expenses claimed by the Assessee are frivolous and non-convincing. Consequently, the AO made certain additions which include the addition of Rs. 1,12,61,685/- on account of expenses claimed against the income of other head.

3. This said addition was also challenged before the Ld. Commissioner who vide impugned order restricted the said addition to tune of Rs. 12,61,685/- only and deleted to the extent of Rs. 1 crore by holding as under:-

“6.6 However, it is a fact that the P&L account includes multiple expenses viz. rental income, house tax, Maintenance and Repairs etc. where the head Maintenance and Repairs also includes exempt items like agricultural income and agricultural expenses. The AR has admitted that income and expenses of agricultural income should not have been included in the head ‘Repairs and Maintenance’. Due to such mixing of taxable and exempt receipts and expenses together in the P& L Account, it becomes a tedious task for an AO to verify all expenses to arrive at the exact nature and quantum of taxable incomes under various heads. Therefore, the reason for rejection of books and estimation of profit is understandable. However, disallowance of a huge expenditure of Rs. 1,12,61,685/- is not required.

Estimate must be fair and honest. Although arbitrariness cannot be avoided, it should not be capricious as decided in the case of Brijbhushan Lai Pradumn Kr [1978] 115 ITR 524 (SC). For reasonable and fair estimation of profits, it is required that disallowance be reduced reasonably to bring the estimation at a fair level. Therefore, disallowance of Rs. 1,12,61,685/- is reduced to Rs. 12,61,685/-. This ground is partly allowed.”

4. The Assessee being aggrieved preferred the instant appeal and in support of its claim submitted that the Ld. Commissioner has erred in holding that the rejection of books and estimation of profits is understandable and confirming the addition of Rs. 12,61,685/- out of total disallowance of Rs. 1,23,16,685/- on account of expenditure, without any basis or material evidence. Further, the action of the Ld. Commissioner in upholding the rejection of the books and partly confirming the disallowance is unjustifiable and unlawful and therefore, books results may be accepted and addition may be deleted. It was further argued that in the subsequent assessment year, no such addition was made and therefore for the rule consistency, the addition is liable to be deleted.

5. On the contrary the Ld. DR heavily relied on the order passed by the Ld. Commissioner and submitted that the Ld. Commissioner has given substantive relief to the Assessee and therefore, the addition under challenge does not require any interference.

6. Heard the parties and perused the material available on record. We find that the AO thoroughly examined the documents and books of account and vouchers etc. which were produced by the Assessee and on finding difficult to understand the authenticity of the books and relevant records, rejected the same by holding that the expenditure claimed by the Assessee is frivolous and non-convincing and consequently made the addition of Rs. 1,12,61,685/- which was claimed by the Assessee as expenses out of income of other head.

6.1 The Assessee claimed that addition under challenge is not based on any logical reasoning and therefore liable to be deleted. Even in the

later Assessment year i.e. AY 2014-15, no such disallowance has been made therefore as per 'rule of consistency' the addition on the basis of disallowance is liable to be deleted. No doubt 'Rule of consistency' is required to be followed if the case is based on the same and identical facts, but not otherwise as every year is a distinct year having its own peculiar facts and circumstances and cannot be equated on the similar footing if the facts are different. Let us see as to whether facts of this year and later year are similar or not

6.2 We find that facts of the instant year and later year are altogether different because in this case the Ld. Commissioner has held that it is a fact that P&L account includes multiple expenses viz. rental income, house tax, maintenance and repairs etc. where the head "repair maintenance" also includes exempt items like agricultural income and agricultural expenses. The Id. AR has also admitted before the Ld. Commissioner that income and expenditure of the agricultural income should not be included in the head of repair and maintenance and therefore, due to such mixing of taxable and exempt receipts and expenses together in the P&L account, it became a tedious task for an AO to verify all expenses to arrive at the exact nature and quantum of taxable income under various heads. In the AY 2014-15, the AO did not raise any doubt on books and vouchers and accepted the same without raising any discrepancies or controversy but here the facts are contrary and therefore 'rule of consistency' shall not be applicable to the instant case.

6.3 The Ld. Commissioner while considering the aforesaid facts, out of disallowance of Rs. 1,12,61,685/- deleted the amount of Rs 1,00,00,000/- and sustained to the tune of Rs. 12,61,685/- only, which we find justifiable, fair and reasonable and therefore we don't have any reason and base to interfere with the adjudication of the Ld. Commissioner for sustaining the meager amount of disallowance considering the peculiar facts and circumstances of the case referred above. Hence, the grounds raised by the Assessee are dismissed.

7. In the result the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 29/04/2022.

-Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 29/04/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi