

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6123/Del/2017 : Asstt. Year : 2013-14

Sameer Builtaid Pvt. Ltd., B-49, 2 nd Floor, Joshi Colony, I.P. Extn. New Delhi-110092	Vs	DCIT, Circle-22(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAICS6389P		

Assessee by : None

Revenue by : Sh. Avikal Manu, Sr. DR

Date of Hearing: 15.03.2022

Date of Pronouncement: 31.05.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-30, New Delhi dated 21.06.2017.

2. The only ground taken up by the assessee is as under:

"2. That the Id. CIT(A) erred while rejecting books of account and estimation of profit @ 2.5% of total turnover to Rs.43,36,084/- while books of accounts were duly audited and produced before the CIT(A)."

3. Brief facts of the case relevant for adjudication are as under:

(i) In this case, the original return of income was filed on 29.9.2013, declaring total income of Rs. 49,44,110/-.

(ii) Subsequently, the assessment u/s 143(3) of the Act, was completed vide order dated 29.02.2016, determining the total income of Rs. 1,90,05,307/-, as against the returned income of Rs. 49,44,110/-, after making the following additions on account of:

(a)	Estimated Income from Business and Profession:	Rs.69,37,735/-
(b)	Excess Receipts appearing in form 26AS :	Rs. 71,23,462/-
	Total :	Rs.1,40,61,197/-

4. After the rejection of books of accounts, the AO estimated profit of Rs. 69,37,735/- @ 4% of the turnover. The A.O. has made the addition in assessment order u/s 143(3) of the Act, dated 29.02.2016 and the relevant portion is reproduced as under:

"The Assessee company e-filed return of income for A. Y.2013-14 on 29.09.2013 declaring income of Rs.49,44,110/-.In accordance with guidelines of selection of cases scrutiny during the F.Y. 2014-15 issued by the CBDT the case was selected for scrutiny. Notice u/s 143(2) was first issued on 02.09.2014. Detailed questionnaires were issued to the assessee company on 13.01.2015, 04.09.2015 & 12.01.2016. In response to various notice issued, Sh. Vivek Kumar, CA appeared and filed details which have been placed on record. The case was discussed with him. The assessee company is engaged in the business of work contract services involving material and labour supply in construction related services.

III. As is apparent from the above, the assessee opted not comply with most of the notice issued by this office. After the service of notice issued on 12.1.2016, Sh. Vivek Kumar, CA appeared and filed part details which have been placed on record.

11. Please note that you were specifically required vide notice u/s 143 (2) issued in the case More than a year ago to produce or cause there to be produced at the said time, any documents, accounts and any other evidence on which you may rely in support of the return filed by you however, till this date the assessee company has failed to produce any documents, vouchers, bills or ledger in respect of any expenditure claimed under the head expenses and other credits claimed to have been received as per the information filed in the return of income therefore the results declared by the assessee company are not verifiable and deserve to be rejected. In the circumstances, please explain why provisions of section 145 of the act, should not be invoked and the results declared by you should not be rejected.

12. You are hereby given FINAL OPPORTUNITY to make it convenient to appear through duly authorized person as per section 288 of the act on 02.02.2016 at 11.10am with your complete set of books of accounts for the accounting period 01.04.2012 to 31.03.2013 along with above details in room no.226 C.R building I.P estate New Delhi 110002. The submissions filed should be duly page numbered along with the summary index sheet at the top. In case of failure the case will be decided ex-parte u/s 144 of the Act on the basis of information available on record. Notice u/s 142(1) is enclosed for necessary compliance simultaneously penalty proceedings u/s 271 (1) (b) shall also be initiated for non - compliance with statutory notices.

(IV) In response thereto, Sh. Vivek Kumar, CA appeared on 03.02.2016, 08.02.2016, 16.02.2016 and 17.02.2016, however failed to furnish the requisite details. The books of accounts as required could not be produced for examination.

(V).1. The order sheet entry dated 03.02.2016 is reproduced below:

"Sh. Vivek Kumar, CA appeared filed letter dated 03/02/2016 seeking adjournment. Given last opportunity. Case fixed for 08.02.2016."

(IV).2 The order sheet entry dated 08.02.2016 is reproduced below:

"Sh. Vivek Kumar, CA and Sh. Sanjay Kumar, Asstt. Manager. Filed letter dated 08.02.2016 case fixed for 16.02.2016

(IV).3 The order sheet entry dated 16/02/2016 is reproduced below:

"Present Sh. Vivek Kumar C.A. To explain as to why the receipts as per 26AS of Rs. 14.83 lacs, Rs. 2.80lacs, Rs. 51.95 lacs and Rs. 1.65 lacs for samiah international & Amarpali hospitality ultra homes and Pan realtors respectively should not be added to income. To explain in the absence of expenses details as required why the business results declared should not be rejected u/s 145 and N.P. @ 8% should not be assessed.

It is seen that increase in the turnover of the assessee company is 70% whereas expenses claimed by the assessee company in the following heads have increased substantially as compared to last year:

S. No.	Head of expense	F.Y. 2011-12	F.Y. 2012-13	Percentage increase
1	Computer Repairing & Maintenance	-	283359	N.A.
2	Cartage Expense	633,810.00	1398345	120.63
3	Contract Charge	12,438,643.00	29368555	136.11
4	Conveyance A/c	601,855.00	2848929	373.36
5	Office Expense Account	556,666.00	5338851	3456.08
6	Printing & Stationery account	67,538.00	969806	1335.94
7	Telephone Expense	82,225.00	357181	334.39
8	Tour & Travels Expense	59,096.00	226190	282.75
9	Vehicle repair & maintenance	3,683.00	60122	1532.42
	Total	14,443,516.00	3,80,51338	

VI.3. It was required vide order sheet entry dated 16.02.2016 to show cause as to why the business results declared by the assessee company should not be rejected u/s 145 and NP @ 8% should not be assessed. The assessee company has failed to furnish any explanation in this regard. No documentary evidence has been furnished in support of the claims made in the income.

VI.4 This office also relies on the following judicial decisions:

The Hon'ble Supreme Court in the case of CIT vs. A. Krishanswami Mudaliar (1964) 53 ITR 122 (SC) has held that section 145 does not compel the A.O. to accept a balance sheet of cash receipts and outgoing prepared from the books of account.

The Hon'ble Supreme Court in the case of CIT Vs. McMilan & Co. (1958) 33 TTR 182 (SC) has held that the A. O. even when he accepts the assessee's method of accounting , is not bound by the figure of profits shown in the accounts.

In the case of Seth Nathuram Munalal vs. CIT (1954) 25 ITR 216 (Nag.) that it was held that if the assessee fails to satisfy the ITO as to the correctness of the profits returned by him. It is open to the ITO to take a higher percentage consistent with the state of trade in the locality or with any special circumstance of the assessee which warrant higher rate of profits. However, the ITO must disclose the basic and manner of computation and make his order a speaking order.

VI. 5. The assessee company has failed to produce evidence / details / documents to substantiate that the trading result declared by it are complete and correct. In the absence of any verifiable documents, this office is constraint to reject the books of account of the assessee company u/s 145 of the Act and the net profit of the assessee company is estimated at 4% of total turnover of Rs.

17,34,43,379/- which comes to Rs. 69,37,735/- to its income under the head income from business and profession.

Further, I am satisfied that the assessee has filed inaccurate particulars of its income, therefore, penalty proceedings u/s 271(1)(c) of the IT Act, is being imitated separately."

5. Before the Id. CIT(A), the Id. AR has filed written submissions/objections vide letter dated 16.6.2017 and the relevant portion is reproduced as under:

"1. While AO has completed the Assessment he has taken income on presumptive basis @ 4% on Total Turnover of Rs. 17,34,43,379/- to Rs. 69,37,735/- and it is added back to returned income. That means Income already declared by the assessee company of Rs. 31,21,362/- should be deducted from the Presumptive income. So double taxation on same income is not permissible in the act.

In response to the notice issued by the A.O. counsel of the Assessee Vivek Kumar, CA appeared and furnished information and documents before the Ld. A.O. on dated 16.10.2016. Later on AO asked to submit tax audit report then the Assessee Company submitted the same on dated 26th February, 2016. Later on AO asked for to furnish books of accounts and other requisite details for which AR of the assessee company appeared before the AO on dated 01st March, 2016, then AO refused to accept the documents and books of accounts and said that he has already passed the order u/s 143 (3) of Income Tax Act, 1961 on dated 29th February, 2016.

Apart from this, books of accounts is rejected on the ground that different nature of expenses is increased in comparison to previous year, but Ld. A.O. has not considered the fact that turnover of the company has also increased by more than Rs.7.00 crore as compared to previous year, which is depicted as below:

" ASSESSMENT YEAR	EXPENSES INCURRED (As per Assessment Order) (in Rs.)	TURNOVER (in Rs.)
2012-13	1,44,43,516	10,30,72,268
2013-14	3,80,51,388	17,34,43,379
Increase in Expenses & Turnover	2,36,07,872	7,03,71,111

Reason for decline in the Net Profit Ratio

There was a slump started in the real estate business from the financial year 2008-09 onwards and consequently net profit has declined in the year under consideration however Gross Profit is maintained by the company. In nutshell indirect expenses cannot be avoided and reduced due to inflation factor (for ex- salary and wages cannot be reduced). Due to effort of directors turnover has increased year after year but net profit has declined due to increase in salaries and wages which had increased from 1,71,78,906 to 3,81,51,644 which is almost double in the year under consideration and reduced the NP by 12% otherwise the company had the control on other expenses in terms of percentage of turnover. The comparative ratio of GP and NP is shown below:-

A SNAP OF COMPARATIVE RATIO						
ASSESSMENT YEAR	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Sales	64,278,111.00	62,903,540.00	103,072,268	173443379.00	175,281,556.00	95,006,535.00
Gross Profit	7,643,139.10	8,758,685.61	14,444,368.28	27758688.78	26,987,033.00	23,321,447.00
Net Profit	3,245,211.00	3,022,319.00	3,717,548.00	3121362	2,825,704.00	(472,400.00)
G.P. Rate	11.89	13.92	14.01	16.00	15.40	4.55
N.P. Rate	5.05	4.80	3.61	1.80	1.61	-0.50

Hence from the above table it is clearly evident that Net profit ratio is going to decrease from the Assessment year 2013-14 onwards.

And all expenses is claimed as per invoice/bills and vouchers which is authenticated by Tax Audit Report and Audited Balance Sheet, but

Ld. A.O. did not give sufficient time to produce all such things in spite of the fact that there was sufficient time to complete the assessment. On the facts and circumstances it is clear that the action of the AO was unlawful, unjustified and against the principal of natural justice.

We hereby produce the books of account, bills and vouchers for your kind perusal.

The A.O. has rejected the books of accounts and assessed income @4% on total receipts of Rs.17,34,43,379/- to Rs. 69,37,735/- and it is added back to income, while Income already disclosed by the Assessee company of Rs. 31,21,362/- should be deducted from the Assessed Income, because double taxation is not allowed as per principle of natural justice.

Hence, we pray to delete the addition made on the basis of presumptive basis AND delete the addition of Rs. 31,21,362.00 which is already considered in income tax return."

6. The Id. CIT(A) after considering the assessment order, written submission/objections, case laws relied upon and oral arguments of Id. AR held as under:

"(i) In the assessment proceedings, several opportunities were allowed by the A.O. to furnish the requisite details. However, as per the A.O., the same were not furnished by the assessee and also books of account alongwith bills/vouchers, were not produced.

(ii) In the assessment order the A.O. has stated that inspite of various opportunities allowed to the assessee company, as mentioned above, the correctness of books of account and result could not be verified. The A.O. has further stated that in the year under consideration, net profit (N.P.), has been shown @ 1.8%, as

against N.P. @ 3.7% in A.Y. 2012-13. It is further stated by the A.O. that there is a increase in turnover by 70%, whereas the expenses have been increased substantially as compared to last year.

(iii) In view of the above, the A.O. proposed by show caused vide order sheet entry dated 16.02.2016, for rejecting the books of account u/s 145 of the Act and to apply N.P. @ 8%. However, in response to this show cause, assessee did not file any reply nor any documentary evidence, in support of the claim made in the return of income.

In view of the above, the A.O. rejected the books of account u/s 145 of the Act and estimated the income of Rs. 69,37,735/-, by applying N.P. @ 4%, on total turnover of Rs. 17,34,43,379/- and made the addition under the head income from business.

(iv) In the appellate proceedings, the appellant has stated that the adequate opportunity was not allowed by the A.O., during assessment proceedings. It is further submitted by the appellant that under the different heads, expenses have been increased, as compared to last year, but the A.O. has not considered the increase in turnover by more than Rs. 7crores. However, it is submitted by the AR that these expenses have been incurred, for which proper invoice/vouchers were maintained with the appellant. It is further submitted by the AR that the books of account of the appellant are audited and no discrepancy have been pointed out by the auditor.

(v) In the appellate proceedings, the appellant has further stated that the A.O. has not taken into account, the income of Rs. 31,21,362/-, already disclosed in the books and offered for tax from the business and accordingly, it is submitted by the AR that there is a double addition on account of ignoring this profit, while estimating the income of Rs. 69,37,735/-.

(vi) In the appellate proceedings, AR has further submitted that in the preceding A.Y. 2012-13, the N.P. before tax has been wrongly taken by the A.O. @ 3.7%, as against correct N.P. @ 3.61% and in A.Y. 2013-14, the same was @1.8%, since there was a slump in the market and the expenses have increased. It is further submitted by the AR that there was a slump in real estate from F.Y. 2008-09 and therefore, in the case of the appellant also the net profit rate is decreasing from year to year.

In view of the above, AR has submitted that the A.O. has wrongly rejected the books of account, as same were audited and applied a N.P. @ 4%, without considering the net profit of Rs. 31,21,362/-, already disclosed in the ITR.

From the above, it is clear that all the books of account alongwith bills and vouchers were not produced during assessment proceedings, without any reasonable cause and therefore, the provision of section 145 of the Act, are correctly applied by the A.O. Accordingly, the above argument of appellant is not acceptable and same is rejected. It is also a fact that there was a slump in the real estate market and the N.P. rate of the appellant is going down from year to year and therefore, N.P. rate adopted by the A.O. @ 4%, appears to be high, in the facts and circumstances of the case.

In view of the above, I am of the considered opinion that the books of account of the appellant, has been correctly rejected by the A.O. u/s 145 of the Act, as in the assessment proceedings, same were partly produced alongwith bills and vouchers. However, the N.P. rate @ 4% applied by the A.O. is high. In these facts and circumstances, I am of the considered opinion that the N.P. @ 2.5%,,will meet the end of justice and accordingly, the net profit will come to Rs.43,36,084/-, as against Rs. 69,37,735/-, determined by the A.O. Accordingly, addition to the extent of Rs. 12.14.722/- (Rs.

43,36,084 - Rs. 31,21,362), is confirmed and addition to the extent of Rs. 57,23,013/- (Rs. 69,37,735 - Rs. 12,14,722), is deleted, since the income to the extent of Rs. 31,21,362/-, has already been offered to tax."

7. We have perused the material available on record. We find that the Id. CIT(A) has given due credit to the income offered by the assessee of Rs.31,21,362/- after determining the NP @2.5% on the turnover. The net profit thus determined is Rs.43,36,084/- against Rs.69,37,734/- determined by the AO. Thus, the Id. CIT(A) after determining NP @ 2.5% confirmed the addition to the extent of Rs.12,14,722/- which we find "more than reasonable" which is moderate, tolerable, intelligent, practical. Hence, we hereby affirm the action of the Id. CIT(A).

8. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 31/05/2022.

Sd/-

(Amit Shukla)
Judicial Member
Dated: 31/05/2022

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR