

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 538/Asr/2018
Assessment Year: 2014-15

Sh. Radhir Singh,
House No. 3, Lane No.1,
Gale Sarika Nagar,
Talab Tillo, Jammu, J&K

[PAN: AYJPS 1278H]

(Appellant)

Vs.

Income Tax Officer
Income Tax Office,
Ward 2(2)-Jammu J&K

(Respondent)

Appellant by : Sh. P. N. Arora, Adv.

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 18.05.2022

Date of Pronouncement: 12.07.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the impugned order dated 16.08.2018 passed by the Ld. Commissioner of Income Tax (Appeals), Jammu in respect of the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

“1. *That the order of the Assessing Officer as well as the order of Learned CIT(A) are both against the facts of the case and are untenable in law.*

2. *That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the AO and without any rhyme & reason, the Ld. CIT(A) has confirmed the addition. As such order of the CIT(A) is liable to cancelled.*
3. *That the authorities below did not appreciate that the assessee is a civil contractor and the returned income at Rs.26,95,620/- should have been accepted.*
4. *That the books of accounts are regularly maintained and this is a tax audit case. No defect in the books of accounts has been found. As such no addition should have been made and the trading should not have been rejected.*
5. *That no omission or commission has been pointed out and the assessee has shown NP rate at 7.9% which is quite adequate and reasonable and there was no reason and justification for applying the rate of 10% and consequently making the addition which may be deleted.*
6. *That the CIT(A) has grossly erred in confirming the rate of 10% applied by the AO without appreciating the facts of the case.*
7. *That the Ld CIT(A) has grossly erred in confirming the order of the AO thereby confirming the addition by sustaining the rate of 10% on the gross contract receipts at Rs.3,41,44,763/-. As such the addition confirmed by CIT(A) is unjustified, uncalled for and the same is liable to be deleted. Alternatively the rate applied is very high & excessive.*
8. *That again the CIT(A) has grossly erred in not allowing the depreciation claimed at Rs. 16,06,050/- even after applying the NP rate. The authorities below did not appreciate that the assessee was entitled for the depreciation even where there is application of net rate of profit. This is a settled issue in view of decision of P&H High Court in the case of Lally Constructions. As such the depreciation as claimed may be allowed.*
9. *That the authorities below has grossly erred in charging interest u/s 234A,234B,234C of the income tax Act,1961 which are not at all called for and the same may be cancelled. Alternatively the interests charged are very high & excessive.*
10. *That any ground of appeal which may be urged at the time of hearing of the appeal.”*

3. The sole issue challenged by the appellant assessee is addition based on higher rate of net profit on the contract receipts by the AO and confirmed by the learned CIT appeal which is spread over to as many as 10 grounds of appeal. All the grounds of appeal were heard together and considered for adjudication of the application of net profit rate to the facts of the appellant's case. During the course of scrutiny assessment proceedings, the assessing officer has rejected the books of accounts maintained by the assessee and applied the net profit rate of 10% on the gross receipts to arrive at taxable net profit of the assessee at Rs.34,14,476/- as against declared by him at Rs.26,95,620/-.

4. Aggrieved assessee, filed appeal before the learned CIT appeal who has confirmed the addition by observing as under:

*"5.2. I have considered the observations of the Assessing Officer as made by him in the assessment order while rejecting the books of account maintained by the assessee and thereafter applying net profit rate of 10% on gross receipts declared by the assessee to arrive at taxable net profit of the assessee at Rs.34,14,476/- as against declared by him at Rs.26,95,620/-. I have also considered written submissions filed by the assessee through his learned AR vide letter dated 13.08.2018 on the issue under reference. I have further considered various judicial pronouncements relied upon by the learned AR of the assessee as well as other material on record. On careful consideration of the rival contentions, it has been noticed that the Assessing Officer has given the detailed reasons for rejecting the book result and for applying net profit rate of 10% on gross receipts declared by the assessee. The Assessing Officer also took support from the decision of Honourable ITAT as referred to above. It has also been noticed that the Honourable Punjab & Haryana High Court at Chandigarh in its decision in the case of M/s Shivam Construction Co. Vs ACIT has upheld the application of net profit rate @10% where books of accounts are not reliable. It has further been noticed that even the **Honourable Jurisdiction High Court of Jammu & Kashmir has upheld the application of net profit rate @10% in its decision in the case of CIT Vs. Ghulam Mohammad Bhat in ITA No. 1 of 2013 dated 04.10.2017.** The Assessing Officer has also given*

proper opportunity to the assessee before applying net profit rate in this case @10% to justify the genuineness of various expenses claimed in the profit and loss account. Moreover, the learned AR of the assessee could not bring any material on record which will prove that all the expenses claimed by the assessee are genuine and supported by proper bills/vouchers. As part of the expenses claimed by the assessee have been paid in cash which too are not verifiable under any circumstances, the action of the Assessing Officer in rejecting the book result and applying net profit rate of 10% in the case of the assessee cannot be said to be unjustified. Under such circumstances and keeping in view the ratios laid down by the Honourable Punjab & Haryana High Court and Honourable Jammu & Kashmir High Court in the cases referred to above, the action of the Assessing Officer in rejecting the books of account in this case and thereafter applying net profit rate of 10% on gross receipts declared by the assessee to arrive at taxable net profit of the assessee at Rs.34,14,476/- as against declared by him at Rs.26,95,620/- cannot be said to be unjustified and as such both of his actions are upheld. In the result, the grounds No. 1, 2, 3, and 4 of appeal taken by the assessee are dismissed.

6. *The ground No. 5 of appeal taken by the assessee is general in nature and do not require any separate adjudication.*

7. *As a result, the appeal filed by the assessee is dismissed.”*

5. The learned counsel for the assessee, stated before the bench that the order of the Assessing Officer as well as the order of Learned CIT(A) are both against the facts of the case and are untenable in law; that the worthy CIT(A) has not appreciated the facts of the case and without any rhyme & reason, the Ld. CIT(A) has confirmed the addition. He argued that the authorities below did not appreciate that the assessee is a civil contractor and the books of accounts are regularly maintained and subject to tax audit; that no defect in the books of accounts has been found and as such no addition is called for to the trading results shown NP rate at 7.9% which is quite adequate and reasonable and there was no reason and justification for applying the rate of 10% and consequently making the addition which may be deleted. The learned AR submitted that the CIT(A)

has grossly erred in confirming the rate of 10% applied by the AO without appreciating the facts of the case on merits and not allowing the depreciation claimed at Rs.16 lakhs after applying the NP rate, in view of the decision of P&H High Court in the case of Lally Constructions. He has also objected to charging interest u/s 234A,234B,234C of the income tax Act,1961.

6. The Ld. DR stands by the impugned order.

7. Heard. As such, estimation of profit is purely a question of fact meaning thereby that no particular rate of profit has universal application and depending upon the facts and circumstances of each case the rate of profit varies. It therefore implies that past history of the assessee's own case with comparable trading results of the civil contractor engaged in the same nature of business activity in the neighborhood/ public vicinity are the most relevant factors and guide for estimation of profit.

8. It is seen that the AO has given reasons for rejecting the book result and for applying net profit rate of 10% on gross receipts declared by the assessee and also took support from the decision of Honourable ITAT as referred in the assessment order. The learned CIT appeal has stated that the Honourable Punjab & Haryana High Court at Chandigarh in its decision in the case of M/s Shivam Construction Co. Vs ACIT has upheld the application of net profit rate @10% where books of accounts are not reliable. It has further been noticed that even the Honourable Jurisdiction High Court of Jammu & Kashmir has upheld the application of net profit

rate @10% in its decision in the case of CIT Vs. Ghulam Mohammad Bhat in ITA No. 1 of 2013 dated 04.10.2017.

9. The CIT appeal has discussed that the Assessing Officer before applying net profit rate in this case @10% granted opportunity to justify the genuineness of various expenses claimed in the profit and loss account but he has not discussed the facts regarding the trading results as per past history (APB, Pg. 5) and parity of facts to the judgements applied. May be the action of the Assessing Officer in rejecting the book result and applying net profit rate of 10% in the case of the assessee cannot be said to be unjustified by the CIT(A) in view the ratios laid down by the Honourable Punjab & Haryana High Court and Honourable Jammu & Kashmir High Court in the cases referred but he is required to address the submissions of the assessee on past history and parity of facts to cases considered in these judgement and rebut the appellant before arriving an adverse view by way of confirming net profit rate of 10% on gross receipts. In our view, such a decision of the learned CIT appeal is required to be set aside to re-examine the matter on the merits by speaking order after granting proper opportunity of being heard to the assessee

10. From the above, it is seen that the authorities below being guided by the ratio laid down in the Judgments referred and relied upon by the them without appreciating the facts of the case of the appellant assessee on parity and past history results to the facts of the cases considered in those judgement. In view of the facts and circumstances of the case the action of the Id CIT(A) confirming N.P rate of 10% without discussing facts and merits of the case is not justified.

Since, the Ld. CIT(A) ought to have come to a definite conclusion after fully understanding the facts of the case and nature of business of the contractor. The Ld. CIT(A) would be required to properly determination the facts by proper exchange and flow of correspondence between the appellant and the CIT(A) on the objection raised by the assessee.

11. Under these circumstances, the impugned order is set aside and the matter is remitted back to the CIT(A) to adjudicate the matter afresh by a speaking order after granting sufficient opportunity of being heard to the assessee. The appellant shall file additional representation/ submission if any and shall cooperate in the fresh proceedings, before the Ld. CIT(A).

12. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 12.07.2022.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

Date: 12.07.2022

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order