

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

I.T.A. No. 373/PUN/2020 : A.Y. 2001-02

Madhukar Bhargav Pawar
203 Shanwar Peth, Karad,
Dist. Satara
PAN: AAQPP 8421 Q

:Appellant

Vs.

The I.T.O. Ward 3, Satara

Respondent

Appellant by : Shri M.K. Kulkarni

Respondent by : Shri M.G. Jasnani

Date of Hearing : 13-09-2022

Date of Pronouncement : 14-09-2022

ORDER

PER SHRI PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from order of the Id. CIT(A)-4, Pune, dated 24-01-2020 for A.Y. 2001-02 as per the following grounds of appeal.

1. On the facts and in the circumstances of the case and in law the Id. CIT(A)-4, Pune, was not justified in dismissing the appeal of the assessee confirming the income assessed by the A.O. The appeal order is not in consonance with the provisions of the law. The same be set aside.

2. On the facts and in the circumstances of the case and in law the Hon'ble Tribunal in ITA No. 547/PUN/2005 restored the matter to the file of the CIT(A) for fresh adjudication. When the matter was set aside to the file of the Id. CIT(A) the A.O had lost his jurisdiction to pass any judicial order. In view of this the proceedings are barred by limitation. They be quashed.

3. On the facts and in the circumstances of the case and in law the appeal was fully heard by the CIT(A)-4 Pune and matter was ripe for passing the final appeal order. In the meantime, there was a change in the incumbent. The successor Id. CIT(A) ought to have allowed fresh opportunity of hearing to the appellant. The successor ICIT(A) passed the appeal order without any fresh hearing. The order suffers from principles of natural justice. The order of appeal is not sustainable. It be set aside.

4. On the facts and circumstances of the case and in law the levy of interest u/s 234A, 234B and 234C is not justified.

2. The brief facts in this case are the assessee Shri Madhukar Bhargav Pawar is an individual and stated to be engaged in running a proprietary concern under the name and style of M/s. Kanchan Construction and engaged in the

business of Civil construction of road development, repair on Govt. tenders. The assessee filed his return of income on 29-10-2001 declaring total income at Rs. 4,83,850/-. Upon selection of the case in scrutiny, the A.O issued notice u/s 143(2) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 15-03-2002 followed by other statutory notices calling for various information. The A.O in the assessment order dated 30-3-2004 stated that the assessee could not produce evidences for some of the expenses debited in the P & L account and he also observed certain defects in the books of accounts. Since, the assessee could not explain and provide sufficient proof against the defects pointed out by the A.O during the assessment proceedings, therefore, the A.O in the assessment order estimated the income by invoking the provisions of section 145 of the Act and assessed the net profit of the assessee u/s 44AD at 8% of the gross contract receipts at Rs. 1,72,16,964/- which comes to Rs. 13,77,357/-. The A.O adopted this net profit under the head "income from business or profession" and proceeded with further additions and subsequently passed the assessment order on 30-03-2004 u/s 143(3) of the Act computing the total income at Rs. 14,48,099/- rounded off to Rs. 14,48,100/-. Therefore, having been aggrieved by the order of the A.O., the assessee preferred an appeal before the first appellate authority. However, on non-compliances of the assessee during the appeal proceedings, the CIT(A)-II Pune passed an appeal order on 10-12-2004 dismissing the appeal of the assessee. Thus, having been aggrieved by the order of the CIT(A), the assessee preferred second appeal before the Tribunal and the Tribunal set aside the order of the CIT(A) remitted the matter back to his file for fresh adjudication. So, therefore, as per the directions of the ITAT, the matter was remanded back to the file of the Id. CIT(A) for fresh adjudication and accordingly, the notices were issued to the assessee from time to time and in response to the said notices issued Shri Sandeep S. Talathi and Mrs. J.R.

Chandekar, authorised representatives of the assessee made oral and written submissions which were considered while the appeal was dismissed by the Id. CIT(A). These facts emerge from para 3 of the Id. CIT(A)'s order. We find from the perusal of grounds of appeal preferred by the assessee specifically ground No. 3 where the assessee contends that principles of natural justice were not followed by the Id. CIT(A) while dismissing his appeal. However, when the Bench enquired and asked the Id. A.R for the assessee to demonstrate how the principles of natural justice were not followed, he could not show any evidences or documents on record regarding such allegations made against the Department. On the contrary, we have already noticed at para 3 of the Id. CIT(A)'s order that there were adequate representations by the assessee through his authorised representatives who had made both oral and written submissions which were considered while the appeal was dismissed. Therefore, the allegations of the assessee that principles of natural justice were not followed by Id. CIT(A) is absolutely baseless, false and untrue. Therefore, ground No. 3 is dismissed.

3. In ground No. 2 the assessee contends that when the matter was set aside to the file of the Id. CIT(A) by the Tribunal, the A.O had lost his jurisdiction to pass any judicial order. We are unable to understand the nature of grievance in this particular ground raised by the assessee since the matter was restored to the file of the Id. CIT(A) and there is no question for the A.O to lose his jurisdiction for passing any judicial order since the impugned order before us is passed by the Id. CIT(A) when the matter was remanded to him by the Tribunal. That also, there is no time limit for the CIT(A) for passing the order. Strictly speaking there is no limitation prescribed for disposal of appeal. However, there is a guidance only, for disposal of appeal u/s 250(6) of the Act. That as per the said provision the Id. CIT(A) may hear and decide the appeal within prescribed time, and that

too if it is possible. The Id. A.R could not justify this ground taken before the Tribunal and also how the Id. CIT(A)'s order could be said to be barred by limitation. Therefore, ground No. 2 is dismissed.

4. Grounds No. 4 and 5 are consequential in nature.

5. Now coming to ground No. 1 relating to merits of the case it is evident from the assessment order that during the assessment proceedings, the A.O observed and discovered certain discrepancies and irregularities in the accounts. Therefore, correctness of the accounts could not be ascertained and as a result correct profit could not be deduced/ascertained properly by him. The assessee vide his written arguments has relied on case-laws which bring out principles for rejection of books of accounts. However, in the present case of the assessee, though the books of accounts were not rejected by the A.O but the method of accounting adopted by the assessee was found to be such that the income could not be properly deduced. Therefore, the A.O adopted fair and reasonable approach to determine the profit of the assessee during the year under consideration and invoked provision of section 145 of the Act. That, the Id. CIT(A) has also given a categorical finding that as per the assessment proceedings the Id. A.R of the assessee has also accepted the discrepancies/defects in the records. Therefore, it was held by the Id. CIT(A) that the A.O was justified in invoking the provisions of section 145(3) of the Act for determining correct profit in the hands of the assessee. Thereafter, the A.O has observed that once the applicability of section 145 of the Act is decided, the next stage is to find out proper percentage to be applied to the contract receipts. In this regard, it was seen that the Act itself in section 44AD of the Act provides useful guidelines in this regard. That after invoking provisions of sec. 44AD of the Act, the Id. A.O applied the rate of 8% to the gross contract receipts to arrive

at net profit of the assessee. The gross contract receipts shown were at 1,72,16,964/- and net profit @ 8% is at Rs. 13,77,357/- as against shown by the assessee at Rs. 4,13,104/-. In this regard, the Id. CIT(A) held as follows:

“The provisions of section 44AD of the Act, provides for estimation of net profit of 8% on gross receipts, in case where the assessee is involved in specified businesses and turnover from the business does not exceed specified limit. Although, the assessee’s case does not fall within the ambit of the provisions of section 44AD of the Act, as its contract receipts exceed the specified limit, the analogy provided in the provisions of section 44AD of the Act can be adopted for estimation of net profit because of the nature of business carried out by the assessee. The nature of business carried out by the assessee squarely fits into the specified businesses referred to in the provisions of section 44AD of the Act. Since, the presumptive rate of net profit of 8% incorporated in section 44AD of the Act, reflects the legislative approved rate of net profit, which can be considered as fair and reasonable to estimate income from civil contract business, where the books of accounts are not found reliable by the A.O. In this case, admittedly, the A.O had not rejected books of accounts in toto however, he discovered certain irregularities / discrepancies for the reason that the assessee has failed to produce supporting bills and vouchers in respect of expenditures and the same has been accepted by the AR of the appellant before the AO during the assessment proceedings. Therefore, considering the overall facts and circumstances of the case, I am of the considered view that the rate of net profit adopted by the AO appears to be fair and reasonable. Hence, I upheld the estimation of net profit of 8% on total gross receipts in the hands of the appellant. Accordingly, ground no. 21 of the appeal is treated as dismissed.”

6. At the time of hearing, the Id. A.R vehemently submitted that in this case application of section 44AD is not warranted in respect of the assessee because admittedly, the A.O has not rejected the books of accounts in toto. However, he has discovered certain discrepancies and that the assessee has failed to produce supporting bills and vouchers in respect of expenditure. Thus, it emerges that the books of accounts were not rejected in totality. However, there were discrepancies and for these, estimation of net profit @ 8% u/s 44AD should not be imposed on the assessee. The Id. A.R also submitted that if one final opportunity is provided then he would produce all supporting bills and vouchers before the Id. CIT(A) and demonstrate genuineness in his case.

7. We have examined all these facts and find that regarding this ground on merits, benefit of doubt is towards the assessee. Since there were certain discrepancies which were noticed by the A.O but he has not rejected the books of accounts also in totality, therefore, there may be some sort of genuineness in

the books of accounts of the assessee which prompted the A.O not to reject the entire books of accounts. It is also true that those discrepancies in the books of accounts were not clarified by the assessee before the revenue authorities. In this background, Id. A.R has prayed that if one final opportunity is provided, they will demonstrate before the Id. CIT(A) providing all bills and vouchers in respect of expenses and try to establish genuineness of the books of accounts in entirety. In the interest of justice therefore, we are of the considered view that such prayer of the Id. .A.R should be accepted and accordingly we set aside the order of the Id. CIT(A) and remand the matter back to his file for re-adjudication as per law after complying with principles of natural justice and at the same time, we direct the assessee that this being the final opportunity he should represent his case by furnishing all relevant documents as called for determination of his case before the first appellate authority. Accordingly, ground No. 1 is allowed for statistical purposes.

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

Order pronounced in the open Court on this 14th September 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 14th day of September 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT- 3, Pune
4. The CIT(A)-4, Pune
5. The D.R. ITAT 'B' Bench Pune.
6. Guard File

/// TRUE COPY ///

BY ORDER,

Sr. Private Secretary
ITAT, Pune

| | | Date | |
|----|--|------------|----------|
| 1 | Draft dictated on | 13-09-2022 | Sr.PS |
| 2 | Draft placed before author | 14-09-2022 | Sr.PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 5 | Approved draft comes to the Sr. PS/PS | | Sr.PS/PS |
| 6 | Kept for pronouncement on | | Sr.PS/PS |
| 7 | Date of uploading of order | | Sr.PS/PS |
| 8 | File sent to Bench Clerk | | Sr.PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R | | |
| 11 | Date of dispatch of order | | |