

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, S.M.C.

आ.अ.सं./I.T.A No. 2647/Del/2019
निर्धारणवर्ष /Assessment Year: 2010-11

Shri Sanjay Rustagi, A-401, Rosewood Apartmnts, Mayur Vihar, Phase-I, New Delhi - 110 091.	बनाम Vs.	Income Tax Officer, Ward : 62 (3) New Delhi.
PAN No. AEWPR0529P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	N o n e;
राजस्वकीओरसे / Department by :	Shri Sumesh Swani, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	28/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	20/09/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-38 [hereinafter referred to CIT (Appeals)] New Delhi, dated 01.02.2019 for assessment year 2010-11

2. The assessee in his appeal challenged the order of the Id. CIT (Appeals) in sustaining the estimation of net profit at 12.5% of the gross contract receipts of Rs.83,18,322/-.

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. I dispose of this appeal after hearing the Id. DR.

4. The Id. DR submits that the assessee did not file return for the assessment year 2010-11 even though the assessee had received income of Rs.83,18,322/- on which TDS was deducted as reflected under section 194C of the Income Tax Act, 1961 (the Act) in 26AS. Notice was issued under section 148 of the Act for re-opening the assessment as the assessee did not file return of income and audit report under section 44AB of the Act. Even in response to the notice issued under section 148 of the Act the assessee did not file return of income nor attended to any of the notices issued under section 142 of the Act by the Assessing Officer posting the case on various dates. The Id. DR submits that left with no option the assessment was completed under section 144 read with section 147 of the Act determining the net profit at Rs.10,39,790/- by estimating the net profit at 12.5% on gross contract receipts of Rs.83,18,322/-. The Id. DR submits that since the assessee was engaged in the business of contractual work of interior design and the business was booming the net income yielded to the assessee was in the range of 10% to 15%, the Assessing Officer estimated the net profit at 12.5%. The Id. DR submits that estimation of net profit at 12.5% was sustained by the Id. CIT (Appeals) as the assessee did not produce any books of accounts nor any evidences to show that the net profit in the line of business carried out by the assessee is only 8%

as the assessee had offered to estimate the profit at 8% before the Id. CIT (Appeals).

5. On hearing the Id. DR and perusing the orders of the Id. CIT (Appeals) and assessment order, it is noticed that the assessee did not file return of income even though the assessee earned gross contract receipts of Rs.83,18,322/-. It is the finding of Assessing Officer that in the course of assessment proceedings the assessee did not respond to any of the notices issued by the Assessing Officer. The Assessing Officer held that the assessee was into the business of contractual work of interior designs and the profit in this line of business is in the range of 10% to 15% and estimated the net profit at 12.5% which was sustained by the Id. CIT (Appeals).

6. Before the Id. CIT (Appeals) the assessee made his submissions as under:-

“4. That the assessee is a proprietorship firm and looking after the civil construction business single handedly is a difficult task. The income of the assessee during the assessment year 2010-11 was below taxable limit and coupled with so far health problems he could not file his Return of income for the assessment year 2010-11. It may kindly be noted that TDS of Rs. 1,64,826/- was already deducted on Contract Receipts of Rs. 83.18.322/- and if the assessee would have filed the Return of Income he would have got Refund which implies that assessee did not have any intentions of not filing the Return of Income.

5. That as per department five Notices were issued, during the course of assessment proceedings of about 9 months. The first three Notices dated 30.03.2017, 01.05.2017 and 18.08,2017 f mentioned in the assessment order u/s 143(3) dated 18,12.2017) were not received by the assessee. Regarding Notice dated 03,11.2017 and 08,12.2017 requiring the assessee to appear on 13.11.2017 and 15.12.2017, we have to humbly state that I could not appear on 13.11.2017 due to health problem since I am

a blood pressure and diabetic patient and was diagnosed with Abnormal ECO during those days. I underwent Angiography also in 2014, Copy of medical records attached. Regarding, 15.12.2017 I have to humbly state that I had come on 15.12.2017 and submitted copy of Bank Statements and other documents related to assessment to the assessing officer but he had to rush for a departmental meeting, though he had taken the documents from me and kept in the file, I waited till evening but the learned assessing officer did not turn up. The 16th and 17th were Saturday and Sunday respectively and I again appeared before the learned assessing officer on 18.12.2017, but I was told that your case has been decided ex-parte, It may kindly be noted that 15th December 2017 was Friday on which I duly appeared, next two days were holidays and I again appeared on 18.12.2017 but the assessing officer passed the assessment order on Monday 18th December 2017 in a hurry due to reasons best known to him without providing the further opportunity to the assessee to represent his case.

6. That the assessee is engaged in the business of civil contractor which is covered under presumptive scheme of taxation as per section 44AD of the Income Tax Act, 1961 and accordingly presumptive rate of 8% profit on contract receipts of Rs.83,18,322/- should have been applied by the assessing officer while framing the assessment u/s 144/147 of the income tax act.

7. In view of the above taxing the contract receipts of Rs. 83,18,322/- at the rate of 12.50% under section 44AD is against the provisions and spirit of the statute of section 44AD of the Income Tax Act, 1961. The Section 44AD is a beneficiary section to provide relief to the small tax payers and should be applied liberally to provide benefit to the assessee. The taxing of contract receipts of Rs. 83,18,322 /- at the rate of 12.50% under section 44AD is too harsh, arbitrary and against the spirit and intention of the statute.

8. That the assessee agrees to buy peace of mind and prays to your honour to accept the income of Rs. 6,65,066/- at the rate of 8% on contract receipts of Rs. 83,18,322/- as against Rs. 10,39,790/- at the rate of 12.50% on contract receipts: of Rs. 83,18,322/- assessed by the assessing officer.

9. That in the interest of justice and the facts and circumstances of the case, it is humbly prayed that the assessment framed by the assessing officer u/s 144/147 applying profit rate of 12.50% on contract receipts of Rs.83,18,322/- may kindly be set aside and income of the assessee applying profit rate of 8% , as provided in Section 44AD of the income tax act, on contract receipts of Rs.83,18,322/- may kindly be accepted.”

7. None of the above submissions were considered by the Id. CIT (Appeals). The assessee stated the reasons as to why he could not appear on various dates before the Assessing Officer. The assessee contended that taxing the net profit at 12.5% is too harsh, arbitrary and against the spirit and intention of the statute and the provisions of section 44-AD of the Act. However, the Id. CIT (Appeals) upheld the net profit at 12.5% without any findings on the submissions made by the assessee. It is noticed from the submissions of the assessee before the Id. CIT (Appeals) that the assessee is agreed for estimation of net profit at 8% to buy peace with the Department.

8. Taking the totality of facts and circumstances into consideration, I am of the view that estimating the net profit at 12.5% on ad-hoc basis by the Assessing Officer is without any basis and on the higher side. Therefore, in the interest of justice I direct the Assessing Officer to estimate the net profit at 10% of gross contract receipts and re-compute the income accordingly. The ground raised by the assessee is partly allowed.

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

Order pronounced in the open court on : 20/09/2022.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 20/09/2022.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	12.09.2022
Date on which the typed draft is placed before the dictating member	16.09.2022
Date on which the typed draft is placed before the other member	20.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	20.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	20.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	20.09.2022
Date on which the final order is uploaded on the website of ITAT	20.09.2022
Date on which the file goes to the Bench Clerk	20.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	