

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.90/Ind/2021
Assessment Year: 2015-16

Shri Narsingh Bindal, 154, M.G. Road, Kannod, Dewas	<u>बनाम/</u> Vs.	ACIT-1(1) Ujjain
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AJHPB 1234 B		
Assessee by	Shri R.S. Dave, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.12.2022	
Date of Pronouncement	09.01.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 03.08.2020 passed by learned Commissioner of Income-Tax (Appeals), Ujjain [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 22.12.2017 passed by learned ACIT 1(1), Ujjain [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2015-16, the assessee has filed this appeal on following grounds:

- “1. The Ld. Assessing authority has erred to consider maintained proper books of accounts, and determined income addition Rs. 31,10,550/- which was unjustified.

2. *The Ld. assessing authority has erred to consider the aspect of section 145(3) rejection of books of accounts is unjustified and deserves to be set aside.*
3. *The Ld. Commissioner of Income Tax (A) has also erred to consider the aspect of the section 145(3) rejection of books of accounts. And declared profit by appellant compared of last 2 years, hence rest addition Rs. 5,00,000/- is also unjustified and deserve to be set aside. ”*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is engaged in the business of civil contractor-ship and mining contractor-ship. The return filed by assessee was subjected to scrutiny-assessment and statutory notices u/s 143(2)/142(1) were issued. While completing assessment, the Ld. AO invoked section 145(3) of the Act; thereby rejected books of account; applied net-profit rate; estimated business income; and thus made an addition of Rs. 31,10,550/-.

4. Aggrieved by assessment-order, the assessee filed first-appeal to Ld. CIT(A) wherein the Ld. CIT(A) granted relief of Rs. 26,10,550/- out of the addition of Rs. 31,10,550/- and confirmed the rest of the addition to the extent of Rs. 5,00,000/-. This way, the Ld. CIT(A) partly allowed first appeal of assessee. Still being aggrieved by order of Ld. CIT(A), the assessee has come in this appeal before us.

5. The grounds raised by assessee in the appeal memo, as cited above, are not happily worded /drafted but, however, during the course of hearing the Ld. AR representing the assessee submitted that the sole grievance of assessee involved in these grounds is the addition of Rs. 5,00,000/- confirmed by Ld. CIT(A). Therefore, we are required to adjudicate a very limited aspect i.e. the addition of Rs. 5,00,000/- sustained by Ld. CIT(A) is proper or not?

6. With the able assistance of Ld. Representatives of both sides, we have gone through the orders passed by lower authorities, viz. (i) assessment-order, and (ii) first-appellate order. On a careful examination, we observe that during the course of assessment-proceeding, the Ld. AO invoked section u/s 145(3) of the Act and rejected books of accounts. Thereafter, the Ld. AO estimated the business income of assessee at Rs. 55,74,215/- and after deducting the net profit of Rs. 24,63,665/- from business declared by assessee in return, determined additional business income of Rs. 31,10,550/- and made addition. When the issue came up before Ld. CIT(A) in first-appeal, the Ld. CIT(A) made an analysis of the factual as well as legal aspects and finally relying upon the decision of Hon'ble jurisdictional High Court of M.P. in the case of **ACIT vs. Genda Lal Hazarilal & Company 134 Taxmann/384**, concluded as under:

“8. Respectfully following the decision of Hon'ble Jurisdictional High Court, I hold that even in the present case books of account cannot be rejected just for the reason that appellant failed to maintain the same project wise or site wise, a practice being consistently followed by him.

9. Now coming to the issue of profits declared, it is observed that the appellant during the current year has claimed depreciation on the higher side as compared to the preceding year as he made new addition to the fixed assets. The genuineness of the addition to the fixed assets has not been denied by the AO. The net profit after excluding depreciation in the assessment years 2013-14, 2014-15 and 2015-16 are respectively 5%, 4.7% and 4.9%. However, it is observed that the appellant has made huge claim under the labour charges at Rs. 5,78,81,667/- which is approximately 42% of the Gross contractual receipts. This claim is very much on the higher side particularly keeping in view of the facts that the claims are made mostly by way of self-made voucher and verification of the same is difficult. This fact has also been pointed out by the AO in the assessment order. Considering the

overall facts, I direct the AO to make disallowance of an amount of Rs. 5,00,000/- out of labour charges.

10. Thus, out of total addition of Rs. 31,10,550/- the appellant gets relief of Rs.26,10,550/- and addition is confirmed to the extent of Rs.5,00,000/-.”

7. A perusal of the order of Ld. CIT(A) demonstrates that in Para No. 8 of his order, the Ld. CIT(A) has made a clear finding and conclusion that the books of account of assessee cannot be rejected. Despite holding so, in the very next Para No. 9 of his order, the Ld. CIT(A) has sustained a lump-sum addition of Rs. 5,00,000/- and that too by stating primarily that the claim of labour charges was on higher side. We do not subscribe to such an approach of Ld. CIT(A) whereby on one hand it is concluded that the books of account could not be rejected and on other hand a lump-sum addition of Rs. 5,00,000/- is sustained. As a matter of fact, we also note that the department has not filed any cross-objection against the conclusion taken by Ld. CIT(A) to the effect that the books of accounts cannot be rejected. Thus, by not filing any cross-objection, the department is agreeing that the books of account were not rejectable, in other words the books of account were acceptable to department. In such a situation, we do not find any justification on the part of Ld. CIT(A) for sustaining a lump-sum disallowance of Rs. 5,00,000/-. Even otherwise, it is judicially well settled in numerous decisions that there is no legal authority in the Act by or under which the revenue-authorities can make a lump-sum disallowance. Taking into account all these aspects, we hardly need to elaborate anything more, suffice it to say that the lump-sum addition of Rs. 5,00,000/- confirmed by Ld. CIT(A) is unwarranted in the case and hence fit for deletion by us. We, therefore, delete the same. The assessee gets relief and succeeds in this appeal.

8. Resultantly, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 09/01/2023.
Order pronounced in the open court on/...../2023.

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 09.01.2023

Patel/Sr. PS

- Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	2.1.23
2.	Date of typing & draft order placed before the Dictating Member	2.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	2.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	