

**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.295/Asr/2019: A.Y. 2015-16

I.T.A. No.101/Asr/2022: A.Y. 2017-18

M/s Ladakh Roadlines 214, First Floor, Sangermal City Centre, Maulana Azad Road, Srinagar Kashmir. [PAN:AACFL5721H] (Appellant)	Vs.	ACIT, Circle, Srinagar. (Respondent)
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Appellant by	Sh. Sunil Kumar Bhatt, CA
Respondent by	Sh. Rajeev Wadhwa, Sr. DR

Date of Hearing	08.02.2023
Date of Pronouncement	24.02.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeals of the assessee were directed against the order of the Id. Commissioner of Income Tax (Appeals)-1,Ludhiana,[in brevity the ‘CIT (A)’] bearing appeal No. ROT-203/IT/CIT(A)-1/Ldh./2018-19, date of order 01.03.2019,

the order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2015-16&2017-18.The impugned orders were emanated from the order of the Id. Asstt. Commissioner of Income tax, Circle-3, Srinagar,(in brevity the AO) order passed u/s 144 of the Act for A.Y. 2015-16 and section 143(3) for A.Y. 2017-18.

2. At the outset, we advert that both the appeals, have the same factual ground. With the consent of both the parties we take **ITA No. 295/Asr/2019 A.Y. 2015-16** as lead case.

ITA No. 295/Asr/2019

3. In ITA No. 295/Asr/2019 the assessee has raised the following grounds:

“That the Learned Assessing Officer has without reason proceeded to complete assessment U/s 144 of the Act by invoking arbitrary profit rate of 6% of gross receipts contrary to rate of 2.07% returned by the appellant on the basis of audited financial statements.

1. In sustaining the assessment made by the Ld. Assessing Officer who has totally erred in framing the impugned assessment U/s 144 since no notices U/s 143(2) was/were

issued or served on the appellant in the manner as prescribed U/s 282 of the Income Tax Act, 1961.

2. *In not allowing the ground that the assessment order U/s 144 dt.26/10/2017 is illegal in view of inadequate or no opportunity provided to the appellant & non-service of draft assessment order upon the appellant before its passing.*

3. *In placing undue reliance on assumptions & presumptions on the basis of which the notices issued have been held as served properly & confirming the impugned order passed U/s 144 of the Act without proper scrutiny of appellant's submissions & evidence.*

4. *In upholding the reasonableness of profit rate of 4% of gross receipts in arbitrary manner contrary to 2.07% profit returned by the appellant without remanding the case to the Ld. Assessing Officer for examination in view of proper books of accounts maintained & audited under law.*

5. *the appellant craves leave to add, modify, substitute or delete any of the grounds of appeal on or before the date of hearing of the appeal.”*

4. In ITA No. 101/Asr/2022 the assessee raised the following grounds:-

“1. On the facts and circumstances of the case the Ld CIT (Appeals) has erred

i. In upholding the arbitrary assessment order passed U/s 144 of the Act by Ld Assessing Officer without any credible justification and reasoning.

ii. in confirming application of adhoc net profit at rate of 4% of gross turnover exclusive of interest income as against total net profit at rate of 4.81% voluntarily declared by appellant inclusive of interest income.

iii. in upholding interest income of Rs.53,60,719/- separately assessable as income from other sources without considering and completely ignoring interest paid at Rs.77,40,472/= on the loans to financial institutions which is far in excess of interest income received during the year.

iv. in placing undue reliance on the arbitrary assessment order passed in hot haste u/s144 of the Act by Ld Assessing officer contrary to nature of business, past history and established principles of law.

v. In upholding the disallowance of salary and interest paid to partners, debited to profit & loss account.

2. That the appellant craves leave to amend, alter or to raise any other additional grounds at the time of hearing of appeal before the hon'ble bench.”

5. Brief facts of the cases are that the assessment was completed u/s 144 of the Act because assessee was unable to produce the books of account and detailed documents during the assessment proceeding. Primarily, the notice was issued at the wrong address which was not related to the assessee. But later on the show cause notice was issued in the assessee's own address and the assessment order was also delivered in the registered address of the assessee. During assessment the ld. AO rejected the books of account u/s 145(3) and determined the net profit @ 6%. Being aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) after considering the assessee's submission determined the net profit @ 4% for A.Y. 2015-16. For AY 2017-18The ld. CIT(A) had restricted net profit @4% including interest & salary paid to partner. No separate allowance is being allowed. The assessee claimed that the ld. CIT(A) had not allowed the interest income within the calculated net profit. But the interest income was not recorded

with the business income and treated it as income from other sources and calculated tax separately. Aggrieved assessee filed an appeal before us by challenging the order of the Id. CIT(A).

6. The Id. Counsel for the assessee has filed written submissions which are kept in the record. The main plea of the counsel was that the net profit rate was 4% in related to both the assessment years. The Id. CIT(A) first determine the net profit @ 4% for assessment year 2015-16. Same theory was applied in the assessment year 2017-18. The assessee further placed that the notice was served in the wrong address, so, the entire assessment was infructuous.

7. The Id. Sr. DR vehemently argued and first relied on the order of the Id. CIT(A) para 5 and 6 of the order for A.Y. 2015-16 which are reproduced as below:

“5. The aforesaid submissions and averments of the appellant have been carefully considered. It is an admitted fact that the appellant did not appear before the AO in the assessment proceedings. Though some reasons have been put forth to justify the non-cooperation or non-attendance of the appellant firm before the AO on the fixed dates of hearing, they do not appear to be genuine in as much as the appellant was given numerous opportunities to attend and furnish the

details requisitioned by the AO to assist him in checking the veracity of the huge expenses claimed in the accounts. In the circumstances, it is held that the appellant did not have any reasonable cause for not appearing before the AO and that the AO was well within his remit to reject the book results and substitute a GP rate for ascertaining the true and correct profits of the appellant firm:

6. *However, it is also noted that the appellant's cases in the past have been subjected to a general disallowance in the scrutiny assessment proceedings. The GP ratio of the appellant firm has also been reported at a lesser figure than in the previous assessment years. It is also to be kept in mind that 'best judgement assessment cannot be an arbitrary or fanciful assessment. Since the appellant firm itself has referred to the case of Associated Contractors, wherein the jurisdictional Tribunal found GP rate of 4% to be reasonable, it is held that in the interest of fairness and justice, the GP rate be kept at 4% in the case of the appellant as well. The AO is, therefore, directed to recompute the taxable profits by applying the GP rate of 4% on the gross receipts.'*

7.1 The Id. Sr. DR further argued and invited our attention in assessment order page no. 2 that the show cause notice was duly issued by the Id. AO in correct address of the assessee which has mentioned in the return of income. Finally, the order was served in the registered address of the assessee. So, there is no miscommunication from the end of the revenue. The Id. Sr. DR further argued that the yearwise net profit of the assessee which is annexed in **APB page 10** for A.Y. 2015-16 is reproduced as below:

Asstt. Year (in Lacs)	Gross Receipts	Profit(%)
2012-13	4626.35	2.42%
2013-14	3838.92	2.68%
2014-15	4401.40	3.11%

7.2 The Id. Sr. DR in argument specifically mentioned that the Id. CIT(A) only restricted the net profit @ 4% for non-submission of the books of account of the assessee.

ITA No. 101/Asr/2022 For A.Y. 2017-18

7.3 The Id. counsel further argued that apart from the determination of net profit percentage the fixed deposit interest was taken separately in the head of income from other sources during the calculation of tax.

7.4 In this respect, the Id. counsel further invited our attention in **APB for A.Y. 2017-18 para no. 8** which is reproduced as below:

“8. That as regards the ground No.6 of grounds of appeals, the assessee contends that Ld. A.O has again erred in treating interest on deposits Rs. 53,60,917/= and miscellaneous income amounting to Rs.73552/-credited in the profit & loss account as income from other sources separately rather than business income as has been accepted by the department in all preceding assessments also completed U/s 143(3). Though it is customary for any entity to ensure adequate availability of the funds for business operations and their proper utilisation from time to time and in case of appellant being a transport, contractor is mandatorily asked to provide bank guarantees to ensure full performance of contracts allotted to it. Bank guarantees are provided by the banks on the basis tangible security in the form of bank deposits/FDR's only. The appellant has further availed demand loans/SOD facility against the security of these bank deposits/FDR's based on fund requirements from time to time. Thus, bank deposits

have served dual purpose i.e. interest income generated on which TDS has been deducted and fulfilment of terms of allotment of contracts also served by way of submission of bank guarantees. The interest earned of Rs. 53,60,917/=has been reflected separately on credit side of profit and loss account for proper presentation and disclosure requirement only since the appellant had option to set off the same against interest expenditure on loans amounting to Rs. 77,40,472/= disclosed on debit side of profit and loss account, which he has not done for fair disclosure purposes.”

8. We heard the rival submission and relied on the documents available on the record. The assessee's case was assessed u/s 144 and the net profit was determined by rejecting the books of account u/s 145(3) of the Act. We find that for assessment year 2014-15 the net profit percentage declared by the assessee was 3.11. The ld. appellate authority has taken a realistic view & has determined the NP @4% on the gross turnover of the assessee. The ld. CIT(A) properly clarified that the assessee was unable to explain the reasons for non-submission of the books of accounts before the assessing authority. Without proper books of account, the ld. appellate authority has determined the net profit @ 4%. After a thoughtful

consideration, we find that no infirmity in the order of the Id. CIT(A), so, the grounds of the appeal of assessee bearing **ITA No. 295/Asr/2019** for A.Y. 2015-16 are dismissed.

8.1. For AY 2017-18 the assessee agitated that the determination of Net profit by the Id. CIT(A) is inclusive of salary & interest paid to partners. This assessment year the assessee had declared NP @ 4.81% in the books. The Id. CIT(A) has determined lower net profit. We find no infirmity in this issue in the order of the Id. CIT(A). Related to issue in interest on deposit the Counsel took the plea that the fix deposit / FDRs are utilize to acquire the bank guarantee. Therefore, the entire FDR is related to opportunity generation of business income in several years. The assessee maintained the consistency for utilising this interest earned and interest paid in the P & L account. The issue was already agitated before the Id. CIT(A) by the assessee. We find that there is a nexus in between interest earned and interest paid in relation to the assessee business. Considering the factual matrix, we find that this particular issue is accepted by the bench. The interest paid should be adjusted with interest received which will not separately assessable.

After a thoughtful consideration, the appeal of the assessee in ground of the **ITA No. 101/Asr/2022** for ground 1.i and 1.ii are dismissed. Ground No. 1.iii is allowed. Ground No. 1.iv and 1.v are dismissed. Ground No. 2 is general in nature.

9. In the result, the appeal of the assessee bearing **ITA No. 295/Asr/2019** is **dismissed & ITA No. 101/Asr/2022** is partly allowed.

Order pronounced in the open court on 24.02.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By Order