

**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.168/Asr/2020
Assessment Year: 2014-15**

Sh. Arshad Mohd. Malik, Jammu. C/o Hotel Chinar, Doda Morh, Batote, Jammu. [PAN:ACGPM4339N] (Appellant)	Vs.	ITO, Udhampur. (Respondent)
---	-----	---------------------------------------

Appellant by	Sh. Rajesh Sehgal, CA
Respondent by	Sh. Prashant Singh, Sr. DR

Date of Hearing	15.03.2023
Date of Pronouncement	22.03.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)Jammu,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961 [in brevity the Act], for A.Y. 2014-

15.The impugned order was emanated from the order of the Id. Income Tax Officer, Ward 2(4) Udampur [in brevity the AO], order passed u/s 143(3) of the Act date of order 28.12.2016.

The assessee has taken the following ground:

“1. That the order passed by Ld. A.O is erroneous in law, arbitrary and not in keeping with facts and records of the Case

1) That the Ld. A.O has erred on the facts as well as on the law to make additions amounting to Rs 700000/- as income from contractual receipts by applying a net rate as per the judgment in the case of Shivam Construction Co. v/s ACIT . The assessee had already mentioned in Para 2 of reply dated 20.12.2016 that the contract receipts amounting to Rs 7000000/- were received by the firm M/S Malik Construction Company in which the Assessee is a partner. The assessee had given copy Form16 of the Firm M/s Malik Construction Company in which the entry of Rs.70,00,000/- was dully reflected. However, The Ex-Eng of PMGSY Div. Ramban Department had quoted wrong PAN of the Assessee instead of the firm in the TDS return of Department. And the department had filed the correction return during the Assessment proceedings . Further in reply dated 22.12.2016 copy of the Acknowledgement of the revised return of the PMGSY div. Ramban was also furnished. The changes in

Form 26 AS were effected by the PMGSY Department before the Assessment order was made . However the Id. ITO did not consider the fact that the income on this receipt has already been accrued in the firm. Even the Ld. CIT (A) also did not bother to get and look into amended form 26AS.

2. The Assessee had produced copy of the receipts of the tuition fee amounting to Rs 37,200 in reply dated 22.12.2016. However, the ld. ITO failed to recollect this fact while framing the order. The Hon'ble CIT (A) has remained Silent (Not Commented upon at all) on this Ground of Appeal.

3. The assessee had mailed in reply dated 28.12.2016 along with copy of ledger account of withdrawals of the assessee in which an amount of Rs. 190330.00 had been duly withdrawn on account of payment of stamp Duty on 18.01.2014. The reply was mailed before framing of the order, however The Ld. ITO did not considered the reply before framing the order & added the amount of stamp duty paid as unexplained expenditure, since he had not seen the reply . The Hon'ble CIT (A) has remained Silent (Not Commented upon at all) on this Ground of Appeal.

4. The Order of Ld. CIT (A) seem to be vague and Contradictory, since he has not commented Up on Ground No 2 & 3. Further, on one Hand he is dismissing ground of appeal No. 1 due to non-Attendance on that hearing. On the Other Hand the Ld. Has mentioned the Assessed Income in his Order

Dated 31/12/2019 at Rs. 16,42,500/- which is the Income of the Original Return filed by the assessee without any addition made by the A.O

5. That the Appellant craves/leaves to alter, amend and add to substitute any grounds of appeal before or at the time of hearing.”

2. Assessee has filed an application for condonation of delay of 239 days wherein, assessee has stated that delay due to the assessee's brother was in serious condition on account of liver ailments and was busy in getting brother operated for liver transplant at Chennai. Even after assessee's brother has expired in the month of January and he could not get the notice. The ld. Sr. DR has not made any strong objection for condoning the delay of 239 days. Therefore, the delay of 239 days is condoned.

3. Brief fact of the case is that the assessee was assessed U/s 143(3) and addition was made related to the net profit amount of Rs. 7 lacs, disallowance of deduction u/s 80C amount of Rs.62,500/- and the addition u/s 69C amount of Rs.1,90,330/-. Aggrieved assessee filed an appeal before the ld. CIT(A). But the ld. CIT(A) upheld the order of the ld. AO. The assessee has argument that the assessee is a partner of M/s Malik Construction and the turnover amount of Rs.70 lacs was

received by the partnership firm but inadvertently the amount was reflected in the 26AS of the assessee. Later on, the 26 AS was rectified, and turnover was fixed against the assessee's firm. But both the revenue authorities had not accepted the fact and calculated net profit @10% on turn over amount to Rs 70 lakh which works out to Rs. 7lakh. The addition of net profit was confirmed in the hands of the assessee. The ld. counsel also submitted the evidence related to deduction in Chapter VIA and the addition u/s 69C. All the additions are duly confirmed by the appellate authority. Being aggrieved assessee filed an appeal before us.

4. The ld. Counsel filed the written submission which is kept in the record. The assessee in argument placed that the assessee is partner of the M/s Malik Construction Co and the Form 26AS of assessee was wrongly reflected to Rs.70 lacs and on that basis the ld. AO added back 10% of the net profit Rs.7 lacs with the total income of the assessee. Finally, the form 26AS is rectified but the assessee was not able to place before the revenue authorities. Copy of the form 26AS is annexed in **APB pages 21 to 24**. The said turnover Rs. 70 lacs is reflected in the books of the partnership firm. The assessment of the partnership firm was completed by accepting the turnover where Rs.70 lacs were declared. Copy of the assessment order of the M/s Malik Construction Co is annexed in **APB pages 30 to**

32. In the order of the Id. Asstt. Commissioner of Income Tax, Circle-2, Jammu, bearing order dated 27.12.2016, order passed u/s 143(3) is clearly depicted and acceptance of turnover Rs.7,54,62,684/- and the gross profit amount of Rs.1,36,11,424/- of the partnership firm.

4.1 Related to deduction under Chapter VI-A, the assessee paid the tuition fee of his children amount of Rs.62,500/-. But during hearing the assessee was able to produce the receipts of the tuition fee amounting to Rs.38,700/- which has claimed for deduction under Chapter VI-A, **APB page 16.**

4.2 Related to addition amount of Rs.1,90,330/- was related to payment of stamp duty. The Id. Counsel claimed that the assessee had made reply dated 28.12.2016 alongwith copy of the ledger a/c related to explanation amount of Rs.1,90,330/- which had been duly withdrawn on account of payment of stamp duty on dated 18.01.2014. The assessee claimed that the receipt was placed before the Id. AO before framing the assessment order, but the Id. AO had not taken care of the assessee's submission. The documents have further submitted before the ITAT in **APB pages 17 to 20.**

5. Considering the facts of the case, the assessee has filed application for admission of additional evidence. The following documents are submitted as additional evidence before the ITAT.

“Additional Documentary Evidences

- i) 26AS of the assessee (Arshad Mohd. Malik)
- ii) 26AS of the Partnership firm (M/s Malik Construction Company) (in which contract receipts are reflected).
- iii) Copy of the ledger account of contract receipts in the books of account of M/s Malik Construction Company reflecting contract receipts.
- iv) Copy of journal voucher in the books of M/s Malik Construction Company of the contract receipts dated 05.07.2013.
- v) Audited Profit & Loss Account of M/s Malik Construction Company.
- vi) Copy of assessment order of Malik Construction Company dated 27.12.2016.”

6. The Id. Sr. DR vehemently argued and relied on the order of the revenue authorities.

7. We heard the rival submission and relied on the documents available in the record. From the available documents, the assessee was able to proof that the turnover Rs.70 lacs was not related to the assessee’s a/c. There was inadvertent mistake from the end of the party, PMGSY, Ramban Department, the assessment

order of the firm, ledger a/c of the assessee and the firm has clearly depicted that the entire amount was not related to assessee. The same amount was also deleted from the assessee's form-26AS. In factual matrix, the assessee was able to substantiate that turn over amount to Rs. 70 lakh and calculated net profit amount of Rs.7 lacs is not related to assessee's account. Related to deduction u/s VI-A the documents are submitted before the bench, but the same document should be a point of verification by the lower authorities and also the addition section 69C related to payment of stamp duty was not verified by the any of the lower authorities. The Id. Revenue authorities relied on the order of the M/s Shivam Construction Co. Vs. ACIT in ITA No. 383 & 384/2004, 622/2005, 385 & 386/2004 and 728/2005 of the ITAT Chandigarh Bench, A, Chandigarh related addition of net profit. The moot issue of the order of ITAT-Chandigarh bench is only related to addition of N.P. @ 10% on gross turnover. The referred order is not similar with the assessee's case under factual matrix. The turnover amount to Rs. 70lakh is not related to assessee but related to the firm. Therefore, the same amount of the turnover was duly declared in the account of firm.

7.1 We find that the matter should be remitted back to the Id. AO for further verification of the documents of the assessee and allow the assessee a reasonable

opportunity for hearing in the set aside proceeding. The additional evidence of the assessee is accepted by the ITAT. The ld. Sr DR has not made any objection about acceptance of additional evidence, filed by the assessee. The assessee is directed to submit the additional evidence before the ld. AO for adjudication.

7.2 Considering the above discussion, the ground nos. 1 to 4 are allowed for statistical purposes. Ground no. 5 is general in nature.

8. In the result, the appeal of the assessee bearing **ITA No. 168/Asr/2020** is allowed for statistical purposes.

Order pronounced in the open court on 22.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant 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.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order