

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5923/Del/2019, A.Y. 2010-11

M/s. K B Contractors A-1/265, Janakpuri, New Delhi-110058 PAN : AAHFK7547H	Vs.	DCIT, Circle-62(1), New Delhi
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Assessee by	Sh. Priyansh Jain, CA
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	21.03.2023
Date of Pronouncement:	23.03.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Assessee against order dated 16.04.2019 passed for assessment year 2010-11, by the Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 18.12.2017 u/s 144/148 of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-62(1), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. The assessee is a partnership firm and the case of assessee was reopened on 30.03.2017 u/s 147 of the Act for the following reasons :-

*“Assesses has not filed his return of Income for the A.Y.2010-11. As per ITS details, assesses has received contractual payments amounting to Rs. 10,53,79,607/- and interest receipts of Rs. 6,33,087/- during the F.Y.2009-10. Further, assessee is also in receipt in interest income from refund u/s 244A amounting to Rs.50,401/-. Non-filer notice was issued to the assessee. The case was not selected for scrutiny under CASS or manually. As the contractual receipts of the assessee is Rs. 10,53,79,607/-, it is mandatory for the assessee to audit its books of accounts u/s 44AD since, the total receipts of the assessee during the year exceeds Rs.40 lakhs. In the instant case, no return was fled by the assessee nor any compliance were made by the assessee nor any books were produced for verification to substantiate the receipts of the assessee. As the assessee has not disclosed its taxable income by filing a return of income and since, the above receipts of the assessee exceeds the taxability limit and further, for reasons as made above, the receipts of the assessee amounting to Rs. 10,60,63,095/- (10,53,79,607+6,33,087+50,401) has escaped assessment. ”*

3. During the assessment proceedings, Authorised Representative of the assessee attended the proceedings and filed the computation of income, copy of Profit and loss account and balance sheet. However, a latter stage, non-appeared for the assessee and nor written submissions were filed. Therefore, invoking powers of Section 144 of the Act, the contractual receipts of Rs. 11,90,00,448.00/- were made subject to profit @ 8% by virtue of Section 44AB of the Act and an addition of Rs. 95,20,035/- was made. Further Ld. AO observed that as assessee has not furnished any documentary evidence in support of interest income of Rs. 6,92,452/-, the same is liable to be added an income from other sources.

4. Ld. CIT(A) had sustained the additions primarily for the reason that it was satisfied that the appellant was not maintaining books of accounts and the claim of assessee that the Ld. AO should have taken the profit percentage of the

previous years into consideration was not considered by the Ld. CIT(A) observing that in those years, the books of accounts were produced by the assessee.

5. The assessee is in appeal raising following grounds :-

*“1. That the Hon AO has erred in passing an order u/s 144/148 of the Income Tax Act, 1961 by simply estimating the income @ 8% from contractual services, whereas the turnover was 11,90,00,448/- and the accounts were properly audited u/s 44AB of the Income Tax Act, 1961.*

*2. That the Hon AO has erred in passing an order u/s 144/148 of the Income Tax Act, 1961 by simply estimating interest income of Rs. 6,92,452/- on the estimated income, whereas actual interest income was Rs. 6,35,228/- as per audited accounts and duly reconciled with form 26AS, available on ITS portal.*

*3. In our favor, we also refer the judgment of ITAT Delhi in the case of Style Syntex Pvt. Ltd. New Delhi vs. Department of Income Tax pronounced on 16 June, 2015, ITA No. 73/Del./2010 decided by the bench of Diva Singh, Judicial Member and N.K.Saini, Accountant Member.*

*Further decision of ACIT, Circle-33, Kolkata, Vs. M/s. G.D.Construction & Co., pronounced on 15 December, 2017 and Sai International, New Delhi vs. Department of Income Tax on 28 September, 2012.*

*4. Other grounds will be submitted at the time of hearings.”*

6. On behalf of the assessee it was submitted that as the partners were not on good terms there were some laches in contesting before the Ld. Tax Authorities below. It was submitted that late Shri K.L.Khanna one of the partners was solely maintaining the books of accounts and he has died on 13.12.2017. An affidavit is placed on record to support the contention that Mr. K.L.Khanna was responsible for taking care of books of accounts and was not keeping well since September, 2013 till he expired on 13.12.2017. There were ongoing disagreement between the remaining partners which has been sorted out to some extent and the affidavits reflects that remaining two partners Rajiv

Khanna and Rohan Khanna, both sons of Late Sh. K.L.Khanna, have appointed their respective authorized representative and have given undertaking to produce the requisite details to the Tax Authorities below.

6.1 It was submitted that in the previous assessment years the returns were processed and assessment orders have been passed wherein the net profit margin has been between 1.75 to 2.25% and accordingly it was submitted that Ld. Tax Authorities below have fallen in error in applying net profit margin of 8%.

6.2 It was also submitted that the interest income is shown in the profit and loss account which was furnished to the Ld. AO and its addition in other sources has resulted into double taxation.

7. Ld. DR on the other hand submitted that there is no error in the findings of Ld. Tax Authorities below.

8. Giving thoughtful consideration to the matter on record, the Bench is of considered view that as before Ld. CIT(A) when the assessee had produced material to show that in the previous years, the assessee was assessed at profit of around 2.5% then on the basis of non-maintenance of books of accounts the assessee's case should not have been discredited. There is a presumption of continuity of events unless established otherwise. If the assessee had satisfied the Ld. CIT(A) that in the earlier assessment years 2006-07 to 2008-09, for which assessments were completed u/s 143(3) and assessee had given reasons for being unable to produce books of account due to dispute of partner, then computation of income, copy of P & L account and balance sheet should have been considered with previous years assessment records to justify a best judgment assessment. Ld. CIT(A), which is not only an appellate authority but has also co-terminus powers of Assessing Officer could also have thus intervened.

9. Thus, the facts of case justify restoring the issues to the Ld. AO for giving assessee opportunity to produce the books of accounts and to take the submissions of the assessee into consideration and pass a fresh order. **The grounds and appeal are allowed** for statistical purposes and the issue is restored to the files of Ld. AO.

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

**Order pronounced in the open court on 23<sup>rd</sup> March, 2023.**

**Sd/-  
(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:- 23<sup>rd</sup>.03.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI