

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 366/Kol/2023
Assessment Year: 2014-15

Shri Biswajit Dasbagal 60/31, Mahndra Banerjee Road Kolkata - 700060 [PAN : AMRPB2238E]	Vs	Income Tax Officer, Ward-26(2), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Abhishek Bansal, FCA
Revenue by :	Shri Abhijit Datta, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 30/05/2023
घोषणा की तारीख /Date of Pronouncement: 05/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the Id. CIT(A)"], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 11/07/2022 for the Assessment Year 2014-15.

2. The Registry has pointed out that there is a delay of 220 days in filing of this appeal in time before the Tribunal. The assessee has filed a petition for condonation of delay stating the reasons of delay. After perusing the same, we find that the assessee was prevented by sufficient cause from filing the appeal in time before the Tribunal. Hence, the delay is condoned and the appeal is admitted.

3. The sole grievance of the assessee is that the Id. CIT(A) has erred in confirming the disallowance/additions of expenditure and sundry debtors made by the Assessing Officer at Rs. 12,94,939/-. The Id.

Counsel for the assessee vehemently argued referring to the written submissions filed before the lower authorities and the Id. D/R supported the orders of the lower authorities.

4. We have heard rival contentions and perused the material placed before us.

5. The assessee is aggrieved with the disallowance/addition of expenditure/sundry debtors of Rs.12,94,939/-, we notice that the assessee is an individual engaged in the business of civil work and supply of labour. Income of Rs. 2,14,610/- was disclosed in the return of income for Assessment Year 2014-15, furnished on 04/03/2015. Based on some information received from ITS, case of the assessee was selected for scrutiny under CASS followed by notice u/s 143(2) & 142(1) of the Act. The Id. Assessing Officer called for the financial statements and on going through the trading and profit and loss account as well as the balance sheet noticed that the assessee has claimed various expenses out of which the Id. Assessing Officer was not satisfied with the claim of expenses of Rs.9,42,480/- for want of supporting documents and similarly, the Id. Assessing Officer was not satisfied with the figure of sundry debtors of Rs.3,52,459/-. Accordingly, the Id. Assessing Officer made addition of Rs.12,94,939/-.

5.1. The assessee challenged this ground before the Id. CIT(A). The Id. CIT(A) also confirmed the view of the Assessing Officer since the assessee could not produce the documents.

6. We notice that the assessee is engaged in civil construction and labour supply work and turnover of the assessee is Rs.24,00,000/-. The revenue authorities have, nowhere disputed the sales turnover of the assessee. The Id. Assessing Officer has accepted the claim of purchase of materials but for some of the expenses, he was not satisfied. We notice that as per provisions of Section 44AD of the Act, which deals with the special provision of computing profit and gains of businesses, under the category of eligible businesses, where the total turnover or gross receipts do not exceed Rs.60,00,000/- and the if the profit is disclosed @8% and above, then, the assessee is not required to maintain any regular books of accounts and other documents as required u/s 44AA(2) of the Act. In the instant case, the turnover of the assessee is Rs.24,00,000/- and the net profit offered to tax is Rs.2,26,700/- which come to net profit @9.8%, i.e., above 8%. Then, just for the reason that the assessee has not claimed the income under the category of presumptive taxation u/s 44AD of the Act, the assessee cannot be subjected to such addition which has been made by the Assessing Officer in the instant case. Further along with the disallowance of expenses, Id. Assessing Officer has gone one step further to disallow the sundry debtors also. Ld. CIT(A) ought to have appreciated the fact that, Section 44AD of the Act is applicable on the case of the assessee, and should have given relief to the assessee.

7. We, therefore, under the given facts and circumstances of the case and also keeping into consideration the proviso to Section 44AD of the Act regarding computation of computing profits and gains of

businesses on presumptive basis @8% and also considering the fact that the net profit declared by the assessee is 9.8%, are of the view that the alleged disallowance of expense and addition of sundry debtors is uncalled for. We thus set aside the findings of the Id. CIT(A) delete the impugned disallowance/addition of Rs.12,94,939/- and allow the grounds raised by the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 5th June, 2023 at Kolkata.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 05/06/2023

**SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata