

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.80/RPR/2021
(Assessment Years: 2014-2015)

M/s D.C. Construction, B-1, Parijat Extension, Nehru Nagar, Bilaspur(C,G.)	Vs	DCIT-1(1), Bilaspur
PAN No. :AAJFM 0294 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G.S. Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri Choudhary N.C.Roy, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	27/06/2023
घोषणा की तारीख/ Date of Pronouncement	:	10/07/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The assessee has filed this appeal against the order passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 27.08.2021 for the assessment year 2014-2015, on the following grounds:-

1. *That the learned CIT(A), National Faceless Appeal Centre (NFAC), Delhi erred in passing the Order without allowing opportunity to the Appellant. The Notices dt.24.12.2020, 04.03.32032, 23.03.2021 and 16.08.2021 referred in the Order of the Id. CIT(Appeals) did not come to knowledge of the Appellant.
Prayed to delete the addition & disallowance.*
2. *That the learned CIT(Appeals) as well as the Ld. Income Tax Officer erred in rejecting the books of accounts and further erred in applying provisions of Sec.145 through the Appellant has kept and maintained the regular books of accounts, properly supported and audited.
Prayed that provision of Sec.145 are not applicable and trading results be accepted.*
3. *That the Ld. CIT(Appeals) further arbitrarily erred in confirming the Order of the Ld. Assessing Officer wherein he applied gross profit rate of 12.5% on the receipts as against 2% shown by the Appellant, thereby making an addition of Rs.34,20,795/-.*

Prayed that application of gross profit rate of 12.5% is arbitrary, without any basis, against the past record of the Appellant, and therefore, the addition be deleted.

2. Further, the assessee has filed additional ground, which was received by the Registry on 26.06.2023, which reads as under :-

"4. That under the facts and the law, without prejudice to earlier Grounds, the learned AO further erred in making addition of Rs.7,76,901/- being interest on FDR which was already included in the income Returned by the Appellant at Rs.36.84.830/-, thus there is double taxation on the above-said sum of Rs.7,76.901/-. Prayed to delete addition of Rs. 7,76.901/-."

It is prayed to kindly admit the above additional Ground numbered as Ground No. 4.

3. In view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., reported in (1998) 229 ITR 383 (SC), it is open to the assessee to raise the points of law even before the Tribunal which was not raised earlier. Therefore, the additional ground raised is admitted and taken on record.

4. Brief facts of the case are that the assessee firm is a civil contractor and is engaged in civil, building, roads and construction works. The assessee filed its return of income electronically for the year under consideration on 29.11.2014 disclosing total income at Rs.36,84,830/-. Upon selection for scrutiny through CASS, notice u/s.143(2) of the Act and in response to the same, the assessee filed its submissions and filed its books of accounts, which were audited u/s.44AB of the Act. During the course of assessment proceedings, the AO found that the assessee has shown turnover of Rs.18,02,48,013/- and he gross profit shown at Rs.2,35,19,792/- which in terms of percentage comes to 13.05% and net profit shown at Rs.36,84,826/- which in terms of percentage comes to

2.04%. On perusal of the books of accounts produced by the assessee, the AO found that the books of accounts are not maintained properly and bills/vouchers for expenses are also not available to prove the genuinity of book results. Thereafter the Id. AO not satisfied with the maintenance of books of accounts, has rejected the books of the assessee u/s.145(3) of the Act and framed the assessment u/s.143(3) of the Act determining total income at Rs.71,05,325/- after making addition of Rs.34,20,495/- on account of estimation of NP @12.5% as against the NP declared by the assessee.

5. Against the above order of the Assessing Officer, the assessee filed appeal before the Id. CIT(A), NFAC. As observed by the Id. CIT(A) while passing the order u/s.250 of the Act that in spite of affording several opportunities of being heard the assessee squarely failed to offer any explanation/filed any written submission in support of assessee's contention. With such a remark, Id. CIT(A) has decided the appeal on merits considering the facts of the case as available with him on records. The Id. CIT(A) has dismissed the appeal of the assessee upholding the addition made by the Id. AO stating the reason that since no written submission/documentary evidence to justify the low net profit of 2.04% declared by it and the explanation on the net profit estimated by the AO is not reasonable, were not submitted by the assessee during the course of appellate proceedings. Accordingly, the Id. CIT(A) held that the assessee has nothing to say in the matter and sustained the addition made by the AO.

6. Now, the assessee is in further appeal before the Tribunal.
7. Ld. AR before us submitted that the assessee's books of accounts were audited u/s.44AB of the Act and submitted that both the authorities below have not considered the explanation of the assessee regarding its claim. The assessee is a civil contractor and supply the labour to whom petty amounts are paid on regular basis on piecemeal basis for the entire year. It was also submitted by the Id. AR that Gitti purchase was made from the local people who do not maintain books of accounts. It was also submitted that all the books of account, bills, vouchers & other documents were submitted before the AO. However, the AO without considering the same applied the provisions of Section 145(3) of the Act and estimated the net profit of the assessee @12.5%, which is much higher than the net profit as shown by the assessee. In the appeal, the CIT(A) sustained the estimation adopted by the AO, without allowing opportunity to substantiate its claim. Therefore, the Id. AR prayed that since the ITAT is a final fact finding authority, the facts of the case may kindly be looked into and the addition arbitrarily made by the Id. AO and confirmed by the Id. CIT(A) shall be deleted.
8. On other hand, Id. Sr. DR relied on the orders of the authorities below.
9. We have considered the rival submissions and perused the relevant material available on record. At outset, on perusal of the impugned order, we found that the Id. CIT(A) has dismissed the appeal of the assessee for non-compliance. It is further found that the Id. CIT(A) at para 4.1 has

mentioned that the notice was issued to the assessee on four occasions i.e. on 24.12.2020, 04.03.2021, 23.03.2021 & 16.08.2021 and the date was fixed for hearing on 08.01.2021, 15.03.2021, 31.03.2021 & 27.08.2021. On all the four occasions, the assessee could not make compliance before the Id. CIT(A). There is no proper explanation before us also as to why on all the four occasions the assessee could not comply to the notice issued by the Id. CIT(A). However, Id. AR has filed additional ground before the Tribunal stating that the AO has wrongly added Rs.7,76,901/- being interest on FDR, which was already included in the income returned by the assessee. In view of the above, since the matter pertains to factual verification of books of accounts, computation or other relevant evidence which are necessary to be examined and to conclude that the observation of the Id. AO was in accordance with law or not, which were not available before the Id.CIT(A) so as to examine and appreciate the factual aspect of the case. Further, with regard to addition ground raised by the Id. AR that the amount of Rs.7,76,901/- was already included in the returned income as declared by the assessee, this aspect also needs to be checked and verified. In such circumstances, we are of the considered opinion to restore the matter to the file of CIT(A) to decide the issue afresh. The assessee is directed to file its relevant documents to substantiate its claim before the Id. CIT(A) and should cooperate with him for early disposal of the case, positively, failing which the revenue authorities shall be at liberty to decide the case as per law. Needless to say, the assessee shall be given reasonable opportunity of hearing.

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

Order pronounced in the court on 10/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 10/07/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur