

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'F' NEW DELHI]
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
I.T.A. No. 4965/DEL/2018 (A.Y. 2013-14)

ITO Ward-20(2) Room No. 218, 2 nd Floor, C. R. Building, New Delhi (APPELLANT)	Vs.	Prem Power Construction Pvt. Ltd. Khasra No. 261/1, Village Ghitorni, New Delhi PAN: AABCP8750G (RESPONDENT)
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Assessee by :	Shri Madhur Bansal, CA
Department by:	Ms. Beenu, Sr. DR

Date of Hearing	19.06.2023
Date of Pronouncement	19.07.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue against the order dated 27/11/2017 passed by the Id. Commissioner of Income Tax (Appeals)-38, (hereinafter referred to CIT (Appeals)) for assessment year 2013-14.

2. The grounds of Appeal are as under:-

"On the facts and under the circumstances of the case, the Ld.CIT(A) has erred in law and facts in deleting the addition of Rs.6,05,99,475/- made by the AO by way of rejection of books of

account u/s 145(3) of the Income Tax Act, 1961 as the assessee has failed to produce its books of accounts, bills and vouchers and relevant documents in relation to its foreign projects & therefore the Balance Sheet of the assessee company does not represent true and fair picture of the affairs of the assessee company.

"On the facts and under the circumstances of the case, Ld.CIT(A) has erred in ignoring fact that the Director of the company, himself had admitted during the assessment proceedings that books of accounts in respect of project in Algeria and Nigeria, had not been audited, while allowing relief to the assessee.

3. Brief facts of the case are that, the assessee filed return of income declaring income of Rs. 4,87,940/- the assessment order came to be passed by making an addition of Rs.6,05,99,475/- on account of rejection of books of accounts and held that the assessee is not eligible to claim depreciation @ 60% on survey equipments. Aggrieved by the assessment order dated 30/03/2016, the assessee preferred an Appeal before the CIT(A), the ld. CIT(A) vide order dated 27/11/2017 allowed the Appeal filed by the assessee and directed the A.O. to delete the addition of Rs. 6,05,99,475/- made by applying GP rate of 10%. Aggrieved by the order of the CIT(A) the Revenue has preferred the present Appeal on the grounds mentioned above.

4. The Ld. Departmental Representative submitted that the CIT(A) erred in law in deleting the addition of Rs. 6,05,99,475/- made by the A.O. by way of rejection of books of accounts u/s 145(3) of the Act. The assessee has failed to

produce its books of accounts, bills and vouchers and the relevant documents in relation to foreign projects and, therefore, the balance sheet of the assessee company does not represent true and fair picture of the assessee company. Further submitted that, the CIT(A) ignored the fact that the Director of the Company himself had admitted during the assessment proceedings that the books and accounts in respect of project in Algeria and Nigeria had not been audited, therefore, the findings and conclusions of the CIT(A) is erroneous.

5. Per contra, the Ld. Assessee's Representative submitted that the projects of Algeria and Nigeria were based on cash basis and not mercantile basis, the Ld. A.O. has not verified the audited balance sheet Schedule 'S' accounting policies and notes on accounts line 3 and the ld. CIT(A) after verifying the records rightly found that 'the assessee has maintained its accounts on mercantile system of accounting and not on cash basis which have been verified by the Chartered Accountant in Schedule 'S', "Accounting Policies and notes on accounts" which have already been submitted. Further submitted that the reference to Section 44 BBB is not appropriate as the said Section applicable to a foreign Company and not to an Indian Company. Further submitted that the books of accounts of the assessee are duly audited and the auditor has given his remarks confirming that of foreign transactions are recorded in Indian rupees and the Ld. A.O. has taken up previous year for scrutiny, but not made any disallowance in the previous year. Therefore submitted that, the order of the CIT(A) requires no interference.

6. We have heard both the parties and perused the material available on record. The Ld. A.O. during the course of assessment proceedings directed the assessee to file foreign project wise profits and loss account, bills and vouchers related to expenditure claimed in respect of foreign projects and books of accounts along with bills and vouchers were also sought. The Representative of the assessee appeared and filed part information and the A.R has been once again asked by the A.O. for production of books of account, but the Ld. AR submitted that the 'bills and vouchers related to foreign projects are not available in India and the books of accounts in respect of foreign projects are not available'. On perusal of the available documents produced by the A.R the A.O. after detailed examination and made the addition of Rs. 6,05,99,475/-.

7. The ld. CIT(A) while deleting the addition held that the Ld. A.O. committed an error by applying GP rate of 10% without rejecting the trading result u/s 145(3) of the Act in following manners:-

"4.2 I have carefully considered the submissions of appellant on grounds of appeal 4, 5, 6 and 8 in which addition of Rs.6,05,99,475/- have been challenged. With regard to Right of Way (ROW) expenses, appellant has submitted that ROW expenses are required to be carried out for obtaining Right of way to site and are normally required 3 to 4 times during the construction of line. ROW is required during survey foundation casting tower erection and stringing of wires. This work was contracted to local security agencies who arrange this ROW at each location on different times. They are aware about local customs traditions and ownership or occupation of the land on which the work is to be carried out. All the payments with regard to ROW at various locations have been paid through banking channels only.

4.3 Assessee maintained its accounts on mercantile system of accounting and not on cash basis as is certified by Chartered Accountant in Schedule S, "Accounting Policies and Notes on accounts". AO has tried to confuse the Income expenditure statement submitted for foreign projects by stating that appellant follows cash system of accounting which is not the case. The statement was submitted to show the exact costs which appellant was incurring in each project under different heads. Ass officer was not justified in rejecting the trading results u/s.145 (3) and for disturb the declared GP rate which is supported by audited financial statement of account books of accounts and supporting vouchers. The A.O. has not doubted the income and expenditure statement. He has accepted the figure of sales/purchases. He has only adopted a higher GP rate even though he has examined the purchase and sales invoices and found no discrepancy.

4.4 The assessing officer had a suspicion, but that suspicion could not be held to be true in the light of evidence furnished by assessee. Nowhere in the assessment order has the assessing officer pointed out any defects in the books of accounts and the same have not been rejected u/s 145(3) of the L.T. Act. The Ld. AR of appellant has relied on the decision of Hon'ble Delhi High Court in B.K. Khanna & Co. Pvt. Ltd. vs. CIT (2001) 247 ITR 705,709 Delhi. In the light of principles laid down by Hon'ble Delhi High Court in B.K. Khanna & Co. Pvt. Ltd. vs. CIT (2001) 247 ITR 705,709 Delhi, I hold that the addition of Rs. 6,05,99,475/- by applying estimated GP rate of 10% without rejecting the trading results u/s 145(3) is not warranted. The assessing officer is directed to delete the same. Accordingly, these grounds are allowed.

4.5 Income Tax Act, 1961 allows depreciation on computers and computer software@ 60% at Note 7 to Part B to Appendix 1, Rule 5 of IT Rules. As per Note 7 computer software means any computer program recorded on any disc, tape, perforates media or other information storage device. The instruments on which appellant has claimed depreciation @ 60% are clearly covered by this definition as they store data and software to make numerous calculations and store the same in memory. Catalogues of instruments and the software used for running them were submitted to Assessing officer during assessment proceedings. Details of 9 bills out of 21 bills on which depreciation @ 60% was claimed were filed before AO. However, only 15% depreciation was allowed by assessing officer. In accordance with the decision in the case of CIT vs. BSES Yamuna powers Ltd.[2013] 40 taxmann.com 108/[2004]220 Taxman

51(Delhi) computer accessories and peripherals being an integral part of computer systems are eligible for depreciation at higher rate of 60 percent -CIT v. BSES Yamuna Power Ltd. [2013] 40 taxmann.com 108/[2014]220 Taxman 51(Delhi). Hence assessing officer directed to allow depreciation allowed on 60% on all computer software entered as such under the head survey equipments and/or machinery.”

8. In the present case admittedly the assessee has not produced books of account when the same is called to produce by the A.O. The assessee is required to maintain the books of accounts even for the foreign projects and it is required to be produced before the A.O. as and when the assessee is called to produce. While scrutinizing the books of accounts u/s 143(2) of the Act, it is impossible for the A.O. to ascertain the correct trading results/income of the assessee in the absence of books of account. The assessee has taken of plea before the A.O. that the bills and vouchers along with the books of account are not available in respect of the foreign projects. In our opinion, when the statute required to maintain the books of account and produce the same before the A.O.

9. The Ld. CIT(A) while deleting the addition observed as under:-

“Assessing Officer was not justified in rejecting the trading results u/s 145(3) and for disturb the declared GP rate which is supported by audited financial statement of account books of account and supporting vouchers. The A.O. has not doubted the income and expenditure statement. He has accepted the figure of sales/purchases. He has only adopted a higher GP rate even though he has examined the purchase and sales invoices and found no discrepancy.”

The above said observation of the CIT(A) is not supported by any legal principals or provisions of the Act. On the contrary, Section 145 of the Act deals with Method of accounting which reads as under:-

Method of accounting.

'145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.'

The Section 44AA of the Act deals with maintenance of accounts by certain persons carrying on profession or business which reads as under:-

Maintenance of accounts by certain persons carrying on profession or business

44AA. (1) *Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified' by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act. (2) Every person carrying on business or*

profession [not being a profession referred to in sub-section (1)] shall,-

(1) if his income from business or profession exceeds "[one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds 20[ten lakh] rupees in any one of the three years immediately preceding the previous year; or

(ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed 20[ten lakh] rupees, [during such previous year; or

(iii) where the profits and gains from the business are deemed to the profits and gains of the assessee under "section 44AE) for section 448B or section 44BBB), as the case may be, and the see has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be during such previous year; or]]

(iv) where the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.]

Keep and maintain such books of account and other documents as may enable Assessing) Officer to compute his total income in accordance with the provisions of this Act:

Provided that in the case of a person being an individual or a Hindu undivided the provisions of clause (1) and clause (ii) shall have effect, as if for the words 'one lakh twenty thousand rupees", the words "two lakh fifty thousand pees had been substituted:

Provided further that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii)

shall have effect, as if for the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted] The Board may, having regard to the nature of the business or profession aimed on by any class of persons, prescribe", by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained. Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]”

10. On combined reading of the above Sections, the assessee is duty bound to maintain books of account and same shall be produced before the A.O. so as to deduce the result of the assessee business, irrespective of the business made in foreign country or otherwise.

11. The observation of the CIT(A) contrary to the above provisions of the Act i.e. Section 44AA and Section 145 of the Act. Hence, in our opinion, the CIT(A) is not justified in deleting the addition. The Ld. A.O. had made addition in view of non maintenance of books of account, however, we are of the opinion that the assessee is entitled for depreciation at the prescribed rate in the provisions. Accordingly, we direct the A.O. to estimate the income of the assessee at 10% and grant the applicable rate of depreciation on fixed assets and re-compute the income of the assessee. Accordingly, we partly allow the grounds of Appeal

of the Assessee for statistical purpose. In the result, the Appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on : **19/07/2023.**

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
Dated : 19/07/2023

R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI