

**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.141/Asr/2020
Assessment Year: 1998-99**

M/s Construction Engineers I.E. BaghatBarzulla [PAN: AABFC7715P] (Appellant)	Vs.	Asstt. Commissioner of Income Tax Circle-3, Srinagar. (Respondent)
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Appellant by	Sh. M.A. Mir, CA
Respondent by	Smt. Ratinder Kaur, Sr. DR

Date of Hearing	28.08.2023
Date of Pronouncement	30.08.2023

ORDER

Per:Anikesh Banerjee, J.M.:

The instant of appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Amritsar,[in brevity the 'CIT (A)'] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 1998-99.The impugned order was emanated from the order of Id. Dy. Commissioner of Income Tax, Circle-3 Srinagar,[in brevity the AO] order passed u/s 143(3)/264 of the Act.

2. When the appeal was filed with delay of 1068 days. The condonation petition was filed. The assessee placed that the delay was due to blocking of the Kashmir Valley related abrogation of the Article 370 and Covid-19. The assessee is covered with the order of the **Hon'ble Supreme Court in Suo Motu Writ Petition (C) NO. 3 Of 2020 date of order 10/01/2022** considering the Covid Pandemic. Accordingly, the delay was extended till 28.02.2022 by the order of Hon'ble Apex Court. The ld. DR had not made any objection against the condonation of delay. Accordingly, the delay of 1068 days is condoned.

3. The assessee raised the following grounds:

“1. The Ld. CIT [Appeals) has erred in upholding addition made by Ld. AO by applying net profit rate of 12.5 % on the gross receipts. The said addition therefore deserves to be deleted.

2. The Ld. CIT (Appeals) has erred in upholding addition made by Ld. AO on accounts of miscellaneous receipts. The said addition therefore deserves to be deleted.

3. The Ld. CIT(appeals) erred in upholding addition made on account of disallowance of depreciation. The said addition therefore deserves to be deleted.

4. The Ld. CIT(appeals) erred in upholding addition made on account of difference in depreciation. The said addition therefore, deserve to be deleted.”

4. Brief fact of the case is that the assessment was completed U/s 143(3)/264 of the Act. Following the order U/s 264 of the ld. CIT, the ld. AO confirmed the Net Profit (NP) rate @12.5% on turn over amount to Rs. 4,75,75,833/- which works out to the net profit of the assessee amount to Rs. 59,46,979/-.The order U/s 264, passed by the ld. CIT is binding on the ld. AO. Apart from NP the additions were made in different heads. The aggrieved assessee filed appeal before the ld. CIT(A). But the assessee remained unsuccessful. Being aggrieved, the assessee filed an appeal before us by challenging the higher rate of NP of assessee.

5. The ld. AR vehemently argued and placed that the assessee filed the petition u/s 264 before the ld. Commissioner of Income Tax (in short CIT). In the order u/s 264 the net profit was directed @12.5% on the turnover. The ld. AO followed the direction as per order U/s 264 of the Act and fixed the NP@12.5% pursuing the order U/s 264. The assessee has agitated that the net profit should not be 12.5% but it would be 6.5% on the turnover. The excess rate of net profit should be deleted. The other grounds of assessee were not pressed by the ld. AR during the hearing.

6. The ld. DR vehemently argued and relied on the order of the ld. AO. The relevant para 3.11 and 3.12 of the assessment order are reproduced as below:

“3.11 It is therefore settled in view of the directions under section' 264; That N.P.rate of 12.5% is to be applied on the gross receipts of the assessee. By applying NP rate of 12.5% on Rs. 47575833/-, the net profit of the assessee comes to Rs. 59,46,979/-.Also as per the direction of the Worthy CIT, given in the 264 Order, the N.P.rate of 12.5% is to be applied on the Misc receipts of Rs. 95,000/- and Rs. 53,100/- of the assessee during the relevant previous year. The profit of the assessee chargeable to tax from these misc. receipts comes to Rs. 18512/-.

3.12 Further the assessee has declared interest income erf Rs 209163/-This income figure has been assessed as declared in the original assessment order and as such the interest income declared by the assessee is assessed to tax as declared in the return of income.”

6.1 The ld. DR further argued that the ld. AO is binding by the order of his higher authority, order passed u/s 264 of the Act. So, there is no defect in the order of the ld. AO related to frame the order u/s 143(3)/264 of the Act.

7. We heard the rival submission and considered the documents available in the record. The ld. AO framed the order u/s 143(3)/264 of the Act. Accordingly, determination the net profit rate @12.5% as per direction of the ld. CIT pursuing the order U/s 264 of the Act. The ld. AO is bound to obey the direction of the ld.

CIT and direction as per the order u/s 264 should be obeyed. The Id. AR placed that the Coordinate Bench of ITAT Amritsar has taken a view for reduction of net profit rate @ 6.5%. So, this order is binding on the Id. AO. But the Id. AO is bound to carry on the direction of the order passed u/s 264. We find no infirmity in the order of the Id. AO and the appeal order. No intervention is required in the assessment order. Accordingly, the ground no. 1 of the assessee is dismissed.

7.1 The ground nos. 2, 3 and 4 was not pressed by the Id. AR during the hearing before bench. Accordingly, the appeal of the assessee is dismissed.

8. In the result, the appeal bearing **ITA No. 141/Asr/2020** is dismissed.

Order pronounced in the open court on 30.08.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial 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.

True Copy
By Order