

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI G. S. PANNU, PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No.2677/Del/2013
(ASSESSMENT YEAR 2009-10)**

M/s Real Conergy(1) Pvt. Ltd. S-12, 2 nd floor, Uphaar Commercial Complex, Green Park Extension, New Delhi PAN- AADCR3480R (Appellant)	Vs.	ITO, Ward-15(2) New Delhi (Respondent)
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Appellant by	Sh. Kalrav Mehrotra, Adv & Sh. Darbara Singh, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	21/08/2023
Date of Pronouncement	18/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the assessee is against the order of Learned Commissioner of Income Tax (Appeals), XVIII, New Delhi ["Ld. CIT(A)", for short], dated 31/12/2012 for Assessment Year 2009-10.

2. The grounds of Appeal are as under:-

"1. The Commissioner of Income Tax(A) has erred in Law and facts of the case in sustaining the addition of Rs.4,90,000/- as extra profit being 1% of the cash sales.

1. The appellant craves to add, alter, amend or change any or all grounds of appeal.

3. Brief facts of the case are that, the assessee filed return of income declaring income of Rs. 27,68,239/-, the case of the assessee was selected for scrutiny and an assessment order came to be passed u/s 143(3) of the Act on 19/12/2011 by making addition of Rs. 4,90,000/- being 1% of the total sales realized in cash. Aggrieved by the assessment order dated 19/12/2011, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 31/12/2012 dismissed the Appeal filed by the assessee. As against the order of the CIT(A) dated 31/12/2012, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the CIT(A) erred in law and on facts in sustaining the addition of Rs. 4,90,000/- as extra profit for 1% of the cash sales. Further submitted that the A.O. did not find any discrepancy in the books of account of the Assessee also not doubted the sales and no information from the parties are called for by the A.O., to verify the genuineness of the sales though the address of the parties were duly provided to the A.O. Therefore, submitted that the addition made by the A.O. which was sustained by the CIT(A) deserves to be deleted.

5. Per contra, the Ld. Departmental Representative submitted that, when the assessee was asked to file confirmation of the parties from whom the cash payment had been received against the sales, the assessee filed only a computer generated print-outs which neither bore the Permanent Account

Number nor the details of the Assessing Officer or the bank account from cash payment had been made, therefore, submitted that the addition made by the Revenue Authorities deserves to be sustained.

6. We have heard both the parties and perused the material available on record. The assessee into the business of trading of Coal and Commission Agent of Uttar Pradesh Small Industries Corporation Ltd. (UPSIC) and Uttar Pradesh State Food and Essential Commodities Corporation Ltd. (UPSECC) . The assessee purchases coal from the said Government Agencies and sell them to various brick Kiln owners. During the year under consideration, the cash sales were around 47 to 48% of total sales and rest was realized in cheque and draft. The payments were received in cash in installments to the range of 1 to 2 lakhs as against the sales. The assessee had shown the commission income of Rs. 94,66,734/- and interest income of Rs. 18,38,230/- on the sales of Rs. 10,21,96,459/- and purchase of Rs. 7,16,81,778/- and the net profit shown was 2.01%. During the assessment proceedings, the Assessee was asked to substantiate the source of cash deposited in the bank account of the Assessee. In response, the assessee has provided following documents:-

- a. Details of bank account;*
- b. Computer generated cash receipts(duplicate copies)*
- c. Cash book;*
- d. Stock Register;*
- e. Sales Invoice;*
- f. Purchase Bills;*
- g. Ledger accounts of parties from whom cash was realized; and*
- h. Copy of the VAT returns.*

The Ld. A.O. on the basis the sales made in cash, made addition of 1% of total cash sale on the on the reasoning that the gross profit ratio of the Assessee was 24.54%, however, the net profit ratio was merely 2.01% and therefore, the Assessee had under invoiced its cash sales, accordingly, added 1% of the Assessee's total cash sales realization to its income as extra profit.

7. It is observed that the Assessing Officer added 1% of the Assessee's total cash sale realization to its income as extra profit without any basis and arrived at the said figure by ignoring the confirmations of the parties from whom the cash sales were realized and the documents brought on record by the Assessee. The A.O. made the addition without rejecting the books of accounts of the Assessee. The Hon'ble High Court of Punjab & Haryana in CIT Faridabad Vs. Smt. Salochana Bhatia, (2012) 208 Taxman 224 (P & H) held as under:-

“The Tribunal while affirming the findings of CIT(A) had recorded that the assessee had produced receipts issued in respect of each connection and the Assessing Officer had adopted the method of estimation without there being any rational basis to support the guess work. Further, no specific defect in the books of account had been pointed out warranting rejection thereof. Learned Counsel for the Revenue was unable to demonstrate that the conclusions recorded by CIT(A) and the Tribunal are perverse in any manner. We find that the findings recorded by the CIT(A) and approved by the Tribunal being based on record do not call for any interference. The substantial question of law is, thus, answered against the Revenue.”

The Raipur Bench of the Tribunal in the case of Sanjay Aggarwal Vs. DCIT in ITA No. 399/RPR/2016 held that as under:-

“12. We have perused the assessment order and the first appellate order. Both the orders are totally non-descript and has nothing worth to say for substitution of book results with estimated profits. Noticeably, in the assessment order, the AO has categorically made an averment to the effect that books of accounts have been produced by the assessee and test checked. The AO has not made mention any material which could questions the correctness and bonafide of the book results declared. The AO is stoically silent on any kind of deficiency in books or excessive claim of any expenses etc. which could substantiate his action. It is incumbent upon the AO to record the inconsistency or incorrectness in the books which prevents the AO to ascertain true income chargeable to tax. The AO has neither rejected the books nor a single voucher was alleged to be unverifiable. In identically placed fact situation, the Hon’ble Calcutta High Court in M/s. Swadeshi Commercial Co. Ltd. vs. CIT ITA No. 219 of 2001 judgment dated 18th December, 2008 concluded that in the absence of rejection of books, the estimation of profit is arbitrary, unreasonable and perverse. In CIT vs. Anil Kumar & Co. (2016) 386 ITR 702 (Kar.), the Hon’ble High Court once again echoed the same view even while framing best judgment assessment. Identical view has been taken in large number of cases quoted on behalf of the assessee and many more. The pre-condition for estimating business income, where the assessee maintains books of account is that the books of assessee should be found to be unreliable or otherwise not realistically capable for demonstrating the income of assessee. Without this first step, the fact that the gross profit/net profit is low

cannot by itself be a ground for taking a view that it is open to the AO to make good alleged deficiency in profits declared. Thus, the action of the AO requires to be cancelled and set aside on this score alone being devoid of any legitimacy.”

8. In the present case, the A.O. had not doubted the genuineness of the documents produced by the Assessee to substantiate the source of cash deposit in the bank account and made the addition of Rs. 4,90,000/- as extra profit being 1% of the cash sales without rejecting the books of accounts of the Assessee. The pre condition for estimating business income where the assessee maintaining books of account is that, the books of the Assessee should be found to be unreliable or otherwise not realistic and not capable of demonstrating the income of the Assessee. Applying the ratio laid down by the Hon'ble High Court of Punjab & Haryana in the case of Salochana Bhatia (supra) and also the Order of the Tribunal of Raipur Bench Raipur, in the case of Sanjay Aggarwal (supra), we are of the opinion that the addition made by the A.O. without rejecting the books of accounts of the Assessee is erroneous. Accordingly, we allow the Grounds of appeal of the Assessee and delete the addition made by the A.O. which has been upheld by the CIT(A).

9. In the result, Appeal filed by the Assessee is allowed.

Order pronounced in open Court on 18th September, 2023

Sd/-

(G. S. PANNU)
PRESIDENT

Dated: 18/09/2023

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