

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH: 'SMC': JODHPUR
(VIRTUAL HEARING AT DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No:- 386/JODH/2018
(Assessment Year: 2012-13)**

M/s M.M. Construction Company, Churu.	Vs.	Income Tax Officer, Ward-2, Churu.
PAN No: AAPFM1247C		
APPELLANT		RESPONDENT

Assessee by : Shri Rajendra Jain, Advocate
Revenue by : Shri Rajeev Mohan, JCIT-DR

Date of Hearing : 11.09.2023
Date of Pronouncement : 20.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(Appeals)-3, Jaipur, Rajasthan, vide appeal no. 563/JPR/14-15 dated 17.08.2017 against the assessment order passed U/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 27.02.2015 passed by ITO, Ward-2, Churu for Assessment Year 2012-13.

2. Grounds taken by the assessee are reproduced as under:

"1. That on the facts and in the circumstances of the case the Id CTT (A) erred in sustaining trading addition by applying profit rate 8.25% as against 8% declared by the assessee.

2. That on the facts and in the circumstances of the case the Id CIT (A) erred in not deciding the grounds of appeal regarding interest on FDRS as business income or income from other sources.

3. That on the facts and in the circumstances of the case the Id CIT (A) ought to have accepted interest on FDR is part of contract receipts in light of decisions of Hon'ble Courts referred before him.

4. That on the facts and in the circumstances of the case the authority below erred in holding that interest received on FDR as income from other sources, particularly when the FDRS were pledged with Government Department while obtained the contract work.

5. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

6. The petitioner prays for justice & relief."

3. There is a delay of 276 days in filing the present appeal before the Tribunal for which petition for condonation of delay along with affidavit is placed on record. In this respect, it is stated that assessee had moved an application U/s 154 of the Act, before the Ld. CIT(A) on 05.12.2017 to point out that Ground Nos. 5 and 6 raised in Form No.- 35 were not adjudicated upon by the Ld. CIT(A) and therefore these ought to be disposed of by passing appropriate order. Assessee has placed a copy of application made U/s 154 of the Act to support his contention. Owing to this application pending before the Ld. CIT(A), assessee waited to file the present appeal before the Tribunal. Since the said application U/s 154 of the Act, remained pending, assessee proceeded to file the present appeal, seeking condonation of delay on this account. Considering the

submissions made by the assessee and as observed by the order of the Ld. CIT(A) wherein the aforesaid grounds raised by the assessee have not been adjudicated upon, we find it proper to condone the said delay and take up the matter for adjudication.

4. Brief facts of the case are that assessee filed its return of income on 30.09.2012, reporting total income of Rs. 46,010/- . Assessee is engaged in the business of civil contract and realized total gross receipt of Rs. 3,05,96,037/- on which it declared a net profit of Rs. 35,550/-. To ascertain the varacity of claim of assessee, on this account, Ld. AO called for supporting documents and vouchers as well as registers and records which the assessee could not furnish. Ld. AO thus invoked provisions of Section 145 and applied a net profit rate of 8.50% subject to claim of interest, remuneration paid to partners and depreciation. Ld. AO further noticed that assessee had earned interest on FDR amounting to Rs. 6,44,145/- . Before the Ld. AO, assessee claimed that interest receipt on FDR relate to carrying on business of the assessee and it is not an income from other sources. On this submission, Ld. AO noted in para 5 as, *"The arguments put forth by the A/R of the assessee firm have been accepted and treat this interest income as income from business for all purpose."* However, Ld. AO proceeded to make an addition of Rs. 6,44,145/- towards FDR interest by holding it as net income since expenses incurred for earnings such income has already been claimed in the regular business of the assessee.

5. Aggrieved, assessee went in appeal before the Ld. CIT(A), wherein ground nos. 5 and 6 were categorically raised in respect of addition made towards interest on FDR.

While disposing of these ground nos. 5 and 6, Ld. CIT(A) stated that these Grounds are 'not pressed' by the Ld. AR of the assessee, hence not allowed.

6. Aggrieved, assessee is in appeal before the Tribunal. Ld. Counsel for the assessee submitted that statement made by the Ld. CIT(A) while disposing Ground Nos. 5 and 6 as 'not pressed' is grossly incorrect as there was no such submission made by the assessee before the Ld. CIT(A). He further pointed that Ld. AO had accepted the argument made by the assessee in the course of assessment proceedings in respect of interest receipt from FDR to be treated as business income and not income from other sources. Despite holding so, Ld. AO has made an addition, even though he had applied a net profit rate at 8.50% of the gross receipt of the assessee.

7. We have perused the order of the Ld. CIT(A) and note that grounds relating to interest on FDR have been disposed of as 'not pressed' by the assessee which have been objected upon by the Ld. Counsel. We also note the observations made by the Ld. AO, in this respect which is noted above. Considering these facts on records and the submissions made by the Ld. Counsel, we find it proper to remit the matter back to the file of the Ld. CIT(A) with a direction to dispose of grounds relating to interest on FDR raised by the assessee in the First Appellate Proceeding by passing a speaking order. Needless to say, assessee be given a reasonable opportunity of being heard and be allowed to make submissions in support of his claims. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

8. On the ground relating to addition made by applying profit rate at 8.25%, we note that Ld. AO had adopted NP @ 8.5% which has been reduced to 8.25% by the Ld. CIT(A). In this respect, Ld. Counsel for the assessee submitted that adoption of such a rate is without any basis and any supporting evidences. This rate has been applied mechanically without any justification and without citing any comparable cases. According to the Ld. Counsel, for estimating Net Profit rate, past history of the assessee is of relevance and must be taken into account which has been altogether ignored by the authorities below.

9. We do find force in the submission made by the Ld. Counsel. Considering facts on records and the submissions made; we find it proper to remit this issue back to the file of the Ld. CIT(A) for fresh adjudication by taking into consideration the submissions made by the Ld. Counsel as stated above. Accordingly Ground no. 1 is allowed for statistical purposes.

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

Order pronounced in the Open Court on 20 .09.2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 20 /09/2023.
Pooja/-

Copy forwarded to:
1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.09.23
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	