

**Income Tax Appellate Tribunal
Delhi Bench "G": New Delhi
Before Shri M. Balaganesh, Accountant Member
and
Shri Anubhav Sharma, Judicial Member**

ITA No. 3133/Del/2017
(Assessment Year: 2013-14)

Sanjay Jain, C/o. Dinesh Mohan, Advocate, 2, Anand Vihar, Lane No. 1, Circular Road, Muzaffarnagar, (Appellant)	Vs. DCIT, Circle Saharanpur, Uttar Pradesh
PAN: ACKPJ3369F	(Respondent)

Assessee by :	Shri Ankit Gupta, Adv
Revenue by :	Shri N. G. Joseph Gangte, CIT DR

Date of Hearing	05/10/2023
Date of pronouncement	10/10/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3133/Del/2017 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals), Muzaffarnagar [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 62/16-17/MZR dated 15.02.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.03.2016 by the Assessing Officer, ACIT, Circle-2, Muzaffarnagar (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal :-

"1. That assessment order passed u/s 143(3) and addition made by the assessing officer are illegal, bad in law and without jurisdiction. The CIT(A) erred in upheld the same.

2. *The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.90,59,170.00 as against declared income of Rs.37,89,190.00. The CIT(A) erred in upheld the same.*

3. *That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in upheld the action of rejection of books of accounts U/s 145 of by the assessing officer without pointing out any single discrepancy in the books of accounts maintained by the assessee, which is highly arbitrary, unjust and against the facts and circumstances of the case.*

4. *That, the Assessing officer/CIT(A) erred in rejecting the books of account U/s 145(3) without pointing out that how it is impossible to deduce the correct income from the books of account maintained by the assessee appellant, which is highly arbitrary, unjust, and against the facts and circumstances of the books.*

5. *That, in view of the facts and circumstances, the CIT(A) erred in estimating the gross profit at 5% of the totally turnover and made the addition of Rs.91,37,680/-, which is highly arbitrary, unjust, excessive and against the facts and circumstances of the case.*

6. *That, the CIT(A) failed to appreciate that there is no basis of estimation of gross profit @5%, which is highly arbitrary, excessive, unjust and against the facts & circumstances of the case.*

7. *That the Assessing Officer/CIT(A), in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/ disallowance on estimated basis, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.*

8. *The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.*

9. *That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*

10. *That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*

11. *That the interest U/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out."*

3. Though the assessee has raised several grounds, the only effective issue to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the action of the Id AO in estimating the net profit of the assessee at

5% as against 2.13% actually declared by the assessee in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a civil contractor engaged in the business of supply of material and labour. The return of income for AY 2013-14 was filed by the assessee on 02.12.2013 declaring total income of Rs. 37,89,190/-. It is not in dispute that the assessee is engaged in civil contract works in the form of material supply and labour supply with various govt departments. The Id AO directed the assessee to produce books of account together with supporting evidences. The Id AO on perusal of the same found lot of deficiencies in the books of account and also observed that the supporting evidence for justifying the incurrance of various expenses more especially labour charges paid were only available in the form of self generated vouchers and not supported by any muster roll containing names of employees , employee number and their signature. Further, no log book has been maintained for the usage of the vehicles by the assessee to justify whether the vehicle has been used exclusively only for the purpose of business and that no personal element was involved thereon. Similar observations were made by the Id AO with regard to incurrance of security charges, car maintenance expenses, miscellaneous expenses etc. With these observations, the Id AO proceeded to treat the books of account to be defective and rejected the book results of the assessee in terms of section 145(3) of the Act and proceeded to estimate the net profit of the assessee at 5% of the contract receipts and made addition of Rs. 91,37,680/- as business income of the assessee. This action of the Id AO was upheld by the Id CIT(A).

5. We find that the Id AR before us has placed the comparative chart depicting the net profit earned by him from AY 2010-11 to 2015-16 (preceding and succeeding years). The said chart for the sake of convenience is reproduced hereunder:-

Asstt. Year	2010-2011	2011-12	2012-20E1	2013-2014	2014-2015	2015-2116
Sales	87,84,073.16	36,53,083.25	56,61,524.00	8,54,224.00	45,24,958.25	23,65,100.00
Contract Work	6,65,18,706.00	6,90,51,514.00	8,85,57,296.00	18,18,99,381.00	4,13,86,029.45	5,34,67,700.00
Total Turnover	7,53,02,779.16	7,27,04,607.25	9,42,18,820.00	18,27,53,605.00	4,59,10,987.70	5,58,33,284.00
Labour Charges & Earth Work Expenses,	6,42,90,650.00	6,59,85,120.00	8,44,39,203.00	17,46,42,737.77	3,85,16,647.00	5,07,23,400.00
Net Profit	13,62,981.30	14,01,981.14	20,06,564.00	38,39,194.33	10,56,698.69	13,30,606.99
N. P. %	1.81 %,	1.93% ,	2.13% ,	2.12% ,	2.30% ,	2.38 % ,

6. The average of net profit disclosed by the assessee for AY 2010-11 to 2013-14 works out to 2%. However, considering the fact that the books of account produced by the assessee before the Id AO contained lot of deficiencies, it would not be appropriate simply to determine the net profit based on past performance of the assessee alone. Hence, in our considered opinion, determination of net profit @3.5% would meet the ends of the justice in the peculiar facts and circumstances of the instant case. The grounds raised by the assessee are partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

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

-Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:10/10/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi