

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Shri Sonjoy Sarma, Judicial Member &  
Shri Girish Agrawal, Accountant Member]

**I.T.A. No. 8/Kol/2017**  
**Assessment Year : 2013-14**

Das Karmakar Brick Field PAN: AA EFD 1980 C	Vs.	ITO, Ward-23(1), Hooghly
Appellant		Respondent

Date of Hearing	06.09.2023
Date of Pronouncement	06.10.2023
For the Assessee	Shri Sunil Surana, FCA
For the Revenue	Shri Susanta Saha, JCIT, Sr. DR

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 27.10.2016 passed by the Id. Commissioner of Income-tax, (Appeals)-6, Kolkata [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

1. For that in view of the facts and circumstances, the Ld. A.O. has added back to the tune of Rs 33,98, 180/- on the ground of Undisclosed Profit which wholly unjustified, invalid, bad in law and void ab initio and is liable to be quashed/ cancelled/ annulled and the Ld. CIT(A) is wholly unjustified in confirming the addition to the tune of Rs 26,81,490 out of Rs 33,98,180. Even otherwise the addition was highly excessive and wholly unreasonable.

2. For that in view of the facts and circumstances, the Ld. A.O. has added back to the tune of Rs 7,92, 329/- on the ground of Expenses made from undisclosed source which wholly unjustified, invalid, bad in law and void ab initio and is liable to be quashed/ cancelled / and the Ld. CIT(A) is wholly unjustified in confirming the said addition. Even otherwise the addition was highly excessive and wholly unreasonable.

3. For that in view of the facts and circumstances, the Ld. A.O. has added back to the tune of Rs 12,51,431/- on the ground of Expenses disallowed u/s 40A(3) which wholly unjustified, invalid, bad in law and void ab initio and is liable to be quashed/ cancelled / annulled and the Ld. CIT(A) is

*wholly unjustified in confirming the said addition. Even otherwise the addition was highly excessive and wholly unreasonable.*

*4. For that in view of the facts and circumstances, the Ld. A.O. has added back to the tune of Rs 2,16,000/- on the ground of Income u/s 44AE which wholly unjustified, invalid, bad in law and void ab initio and is liable to be quashed/cancelled / and the Ld. CIT(A) is wholly unjustified in confirming the said addition. Even otherwise the addition was highly excessive and wholly unreasonable.*

*5. For that your petitioner craves the right to put additional grounds and / or to alter / amend / modify the present grounds before or at the time of hearing.”*

2. Brief facts of the case are that the assessee filed its return of income by disclosing total income of Rs. 8,09,058/- for the A.Y. 2013-14. The case of the assessee was selected for scrutiny followed by notices issued u/s 143(2) and 142(1) of the Act. In response to notices, the ld. AR of the assessee appeared from time to time before the AO and furnished necessary documents and papers as asked by the AO. During the assessment proceeding, the ld. AO noticed that a survey operation in the case of assessee was carried out u/s 133A of the Act and certain books and papers were impounded. On the basis of such observation, a show cause notice was issued to the assessee in compliance to the notice, assessee furnished a reply before the ld. AO and the ld. AO by taking into consideration of such reply made the following additions in the hands of assessee:

- i. Undisclosed profit Rs. 33,98,180/-*
- ii. Expenses made from undisclosed source Rs. 7,92,329/-*
- iii. Expenses disallowed u/s 40A(3) Rs. 12,51,431/-*
- iv. Income u/s 44AE of the Rs. 2,16,000/-”*

The ld. AO assessed the income of the assessee at Rs. 64,67,000/- in the hands of assessee.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed.

4. Aggrieved by the order of ld. CIT(A), assessee is in appeal before the Tribunal. However, the assessee has taken multiple grounds of appeal along with another three additional grounds for adjudication before us. Accordingly, we are going to adjudicate the main grievance of the assessee relating to the confirmation of addition of Rs. 26,81,490/- sustained by ld. CIT(A) while passing the impugned order against the assessee. On this issue, the ld. AR stated that the assessee is in the business of manufacturing and sale of bricks. There was a survey in the business premises of the assessee and daily production registers were impounded by the revenue and on the impounded registers, the ld. AO taking the value of actual sales made during the year at Rs. 1,39,71,365/-. However, there was no paper showing to the fact that any additional sale was found and even during the survey proceeding only the production of bricks over and above the sales shown was found. Accordingly, the AO compared with the sales of Rs. 53,37,779/- disclosed by the assessee in the books of accounts and computed the undisclosed sales of Rs. 86,33,586/-. The ld. AO applied the gross profit @ 39.36% on the difference of Rs. 86,33,586/- and the figure out at Rs. 33,98,180/- as undisclosed profit in the hands of assessee. The ld. AO contended that it was explained to the AO and the CIT(A) that there was excess production in the

hands of assessee but the same was reflected by the assessee as job works by showing additional amount of Rs. 7,16,690/- on account of manufacturing bricks on behalf of others which was apparent from the profit and loss account. The ld. AR contended that in the case of assessee, the entire additional estimate sale was made on account of job work for which job charges was disclosed by the assessee. The ld. AR further submitted even in the case of assessee, the net profit is computed on the additional production it will be covered additional work upto Rs. 83,92,155/-. Hence undisclosed sales can be estimated only at Rs. 2,41,431/- and net profit rate may be applied on the same which will be arrived at Rs. 20,618/-. However, the ld. AO did not accept the submission made by the assessee and applied gross profit rate on the entire additional sale as submitted by the ld. AR of the assessee and even he did not consider the job charges as disclosed by the assessee. Similarly, the ld. CIT(A) also confirmed the action of AO, however ld. CIT(A) allowed partial relief to the assessee by reducing the figure of disclosed job charges of Rs. 7,16,690/- from the addition of Rs. 33,98,180/-. Therefore, the Tribunal may allow the claim of assessee by accepting the disclosed sales at Rs. 2,41,431/- and net profit rate may be applied on such estimated sales figure which will be arrived at Rs. 20,618/. The ld. AR in order to prove the fact he submitted before us the comparative chart of sales vis a vis net profit of the assessee during the year and preceding three years the rate of net profit disclosed was 8.54%. The ld. AR

submitted the judgement of Hon'ble Kolkata High Court in the case of CIT vs S.M. Umer 201 ITR 608 where net profit rate is applied. Further he brought to our notice regarding the judgement of Hon'ble Gujarat High Court in the case of CIT vs President Industries (2002) 258 ITR 654 (net profit rate applied). The same principles have been followed by the Tribunal in the case of Manumati Boro by the Guwahati Bench of ITAT in ITA No. 111/GTY/2020 pronounced on 20.02.2023 which was also a survey case wherein also net profit rate was applied. Hence the AO may be directed to apply the net profit rate of 8.54% on the alleged undisclosed sale of Rs. 2,41,431/- which would be arrived at Rs. 20,618/-.

5. On the other hand, ld. DR objected to the prayer made by the assessee and supported the order of ld. CIT(A) to sustain the addition made by the AO.

6. We after hearing the rival submission and going through the facts of the case, we find that assessee already declared an amount of Rs. 7,16,690/- on account of manufacturing of bricks on behalf of others which was already reflected in its profit and loss account and the entire additional estimated sale was on account of the job work for which job charges was disclosed. However, the ld. AO applied net profit computed on the additional production of bricks by working upto Rs. 83,92,155/- by applying gross profit @ 39.36% instead of 8.54% as claimed by the assessee. Therefore, the findings given by

the ld. CIT(A) in his impugned order is not correct and in the case of assessee undisclosed sales arrived only at Rs. 2,41,431/- from such sales made by the assessee and net profit rate applying 8.54% which will be arrived at Rs. 20,618/- in the hands of assessee by undisclosed profit from sales by applying the ratio laid down by Hon'ble Calcutta High Court in the case of CIT vs S.M. Umer (supra). In terms of above, the ground no. 1 taken by the assessee is partly allowed as indicated above.

7. Ground no. 2 is in respect of disallowance of expenses of Rs. 7,92,329/- made by the AO in the case of assessee regarding undisclosed source. With regard to instant issue, the ld. AR contended that once the net profit is estimated on undisclosed sales by the AO. It takes care of the expenses incurred corresponding to the sales made and no separate addition for specific items of expenses are called for. To substantiate assessee's claim, reliance was placed on the decision of the Hon'ble Jurisdictional High Court in the case of Arjun Bhowmick in ITA no. 134 of 2014 which directly support the case of the assessee.

8. We after hearing the rival submission of the parties and going through the facts of the and following the decision rendered by the Jurisdictional High Court in the case of Arjun Bhowmick (supra\_ which is directly support the case of the assessee wherein the Hon'ble High Court confirmed the view taken by the Tribunal that "once the n.p. rate is estimated, the AO cannot based this

disallowance on the same books of accounts for the purpose of disallowance by invoking provisions of section 40(a)(ia) of the Act or general disallowance u/s 37 of the Act. The estimation made by the AO of net profit will take care of every addition related to business income or business receipts and no further disallowance can be made.” Accordingly, we allow the instant issue in favour of the assessee by following the decision rendered by the Hon’ble Jurisdiction High Court in the case of Arjun Bhowmick (supra).

9. Ground no. 3 is regarding the cash purchase of coal totaling to Rs. 12,51,431/- which was disallowed by the AO and subsequently order of the AO sustained by ld. CIT(A) while passing the impugned order which is bad in law. In this regard, the ld. AR reiterated the submission as made in ground no. 2 of the instant appeal by stating that once the net profit is estimated on undisclosed sales, it takes care of the expenses incurred corresponding to the sales made. Therefore, no separate addition for specific items of expenses are uncalled for and he relied on the decision of the Jurisdictional High Court rendered in the case of Arjun Bhowmick (supra) of ITA No. 134 of 2014 which squarely covered in respect of present issue involved in favour of the assessee. We after hearing the rival submission of the parties and going through the facts of the case and following the decision rendered by the Hon’ble Jurisdictional High Court. We viewed that once the estimation net profit was made by AO and further

disallowance can be made on the expenses on the same books of accounts by invoking section 40(a)(ia) of the Act and accordingly, we allow the instant issue in favour of the assessee by following the decision rendered by the Hon'ble Jurisdiction High Court in the case of Arjun Bhowmick (supra).

10. Further, ground no. 4 is in respect of issue involved regarding the estimation of income u/s 44AE of the Act of Rs. 2,16,000/- made by the AO from the four vehicles which were not taken into account while preparing profit and loss account by the assessee. In this context, the ld. AR submitted vehicles were not used in plying and hiring purposes for the business but assessee has used the same for its own business purposes for carrying and delivery bricks to the various parties. Therefore, the profit cannot be estimated by applying section 44AE of the Act unless it is found that the vehicles were used for the purpose of business of hiring goods. Accordingly, view taken by the ld. CIT(A) by sustaining the order of AO is not correct and the impugned addition liable to be set aside.

11. We after hearing the rival submission of the parties and perused the material available on record, we find that the alleged vehicles were used by the assessee for its own business activity for delivery of bricks to its various customers and there is also no finding from the authorities below that the vehicles were used for hiring of goods. Therefore, the view taken by the ld. CIT(A) by sustaining

the order of AO is not correct after considering the submission of the parties and allow the ground taken by the assessee. The remaining grounds taken by the assessee are either connected or consequential in nature, therefore, need not required to be adjudicated.

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

Order pronounced in the open court on 06.10.2023

Sd/-

Sd/-

(Girish Agrawal)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 06.10.2023  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Das Karmakar Brick Field, C/o. A.K. Sarkar & Associates, Chartered Accountants, AC/93A, 2<sup>nd</sup> Floor, Prafulla Kanan East, Kestopur, Kolkata-700101.
2. Respondent – ITO, Ward-23(1), Hooghly.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata