

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2514/Kol/2019
Assessment Year: 2013-14

M/s. Dilip Kumar Das & Sons Belakoba, P.O. Prasannanagar Dt. Jalpaiguri - 735133 [PAN: AADFD1492L]	Vs	ACIT, Circle - 1(2), Jalpaiguri
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 1605/Kol/2019
Assessment Year: 2013-14

ACIT, Circle - 1(2), Jalpaiguri	Vs	M/s. Dilip Kumar Das & Sons Belakoba, P.O. Prasannanagar Dt. Jalpaiguri - 735133 [PAN: AADFD1492L]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 2515/Kol/2019
Assessment Year: 2015-16

M/s. Dilip Kumar Das & Sons Belakoba, P.O. Prasannanagar Dt. Jalpaiguri - 735133 [PAN: AADFD1492L]	Vs	ACIT, Circle - 1(1), Jalpaiguri
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Somnath Ghosh,
Revenue by :	Shri Rakesh Kumar Das, CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 08/11/2023
घोषणा की तारीख /Date of Pronouncement: 14/12/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

I.T.A. No. 2514/Kol/2019 and I.T.A. No. 1605/Kol/2019 are cross-appeals directed against the order of the Learned Commissioner

of Income Tax (Appeals), Jalpaiguri (hereinafter the “ld. CIT(A)”) dt. 27/01/2017, passed u/s 250 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year 2013-14.

I.T.A. No. 2515/Kol/2019 is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals), Jalpaiguri (hereinafter the “ld. CIT(A)”) dt. 30/01/2018, passed u/s 250 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year 2015-16.

2. The Registry has pointed out that there is a delay of 145 days in filing of I.T.A. No. 2514/Kol/2019 and I.T.A. No. 2515/Kol/2019 by the assessee. Petition for condonation of delay is placed on record by the assessee explaining the reasons for late filing of appeal. On perusing the same, we are convinced that the assessee was prevented by sufficient cause from filing these appeals in time. Accordingly, we condone the delay and proceed to admit the appeals for hearing.

3. We first take up the cross-appeals for Assessment Year 2013-14. Facts in brief are that the assessee is a partnership firm engaged in the business of Civil contracts. Income of Rs.1,98,85,090/- declared in the return of income filed for Assessment Year 2013-14 on 28/09/2013. Subsequent to survey conducted u/s 133A of the Act at the business premises of the assessee on 31/07/2015, notice u/s 148 of the Act was issued and duly served followed by validly serving notice u/s 143(2)

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and 142(1) of the Act. Assessment proceedings were carried out and various details as called for by the Id. Assessing Officer were submitted. During the year turnover of the assessee was Rs.29,03,76,782/- on which net profit declared @5.78%. The Id. Assessing Officer after going through the records observed certain discrepancies and made additions under various heads totaling to Rs.7,34,12,430/- assessing total income at Rs.9,32,97,520/- in the following manner:-

"In the light of the above discussions and facts made thereon, in respect of the case and after having test-checked the inventorized documents with the bank statements and ITS (Individual Transaction Statement) and with the documents and submissions produced before the undersigned the total income of the assessee is hereby computed as under:-

Total Income as declared by the assessee		-Rs.1,98,85,090/-
Add:		
1. Addition on account of Expenses (Para. 1)	Rs. 8,71,130/- Rs. 75,00,000/-	
2. Labour Contract Account (Para.2)		
3. Disallowance of Payments u/s40A(3)(Para.3)	Rs.1,09,40,467/-	
4. Disallowance of Hire Charges for Non-Deduction of TDS(Para.4)	Rs.22,85,890/-	
5. Disallowance of Sundry Creditors (Para 5)	Rs.5.18.14.943/-	-Rs.7.34.12.430/-
TOTAL ASSESSED INCOME		-Rs.9,32,97,520/-

4. The assessee challenged the additions made by the Id. Assessing Officer before the Id. CIT(A) and made detailed submissions. After considering the same and also considering the order of his predecessor for the preceding years, estimated the net profit @8% instead of 5.79% show by the assessee and partly allowed the assessee's appeal.

5. Aggrieved, both the assessee and the revenue are in appeal before this Tribunal.

6. At the outset, the Id. Counsel for the assessee submitted that similar issue came up for adjudication before this Tribunal in assessee's own case for Assessment Year 2011-12 and 2014-15 wherein also books of accounts of the assessee were rejected and profits were estimated by the Id. CIT(A) @8%, however, Hon'ble Tribunal partly allowed the assessee's appeal by estimating the net profit @6.75% on the contractual turnover. The Id. Counsel for the assessee prayed that for the year under appeal also, as against all the additions made by the Assessing Officer and partly allowed by the Id. CIT(A), the net profit may be estimated @6.75%.

6.1. On the other hand, the Id. D/R vehemently argued supporting the order of the Id. Assessing Officer.

7. We have heard rival contentions and perused the record placed before us. We notice that the assessee is a civil contractor has declared the net profit @5.79%. The Id. Assessing Officer had made additions under various heads but the Id. CIT(A) has observed that the books of accounts of the assessee deserves to be rejected and profits to be estimated @8%. We also notice that this Tribunal in the assessee's own case for Assessment Year 2011-12 & 2014-15 has decided the similar issue and sustained the addition @6.75% by observing as follows:-

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“3. Brief facts of the case is that the assessee is a Government Contractor performing civil jobs viz. construction of roads, culverts etc. in the remote areas of North Bengal including national and international border areas. The AO noted that for the Assessment Year 2011-12, the assessee firm has shown net profit of 5.48% from its contractual business. The AO noted that there was a survey on 31.07.2015 (i.e. AY 2016-17) conducted in the assessee's premises and after issuing statutory notices, the assessment was carried out against the assessee. The AO noted that there was unexplained expenditure so, he made addition u/s 69C & on the basis of violation of **section 40(a)(ia) and section 40A(3)** for AY 2014-15 an amount of Rs. 54,57,223/- & Rs. 1,10,97,600/- was disallowed. Similarly for AY 2011-12 disallowance u/s 40A(3) Rs. 52,62,039/- was made. On appeal, the Ld. CIT(A) deleted the additions made u/s 69C, 40(a)(ia) & 40A(3) of the Act and thereafter rejected the books of accounts of the assessee and estimated income[NP] at 8% of the turnover. Aggrieved the assessee is before us.

4. We have heard both the parties and perused the records. We note that assessee is a civil contractor of the Government and is engaged in the construction of roads and other civil works in the border areas of the State/National & International borders. In the assessment year 2011-12 & 2014-15, the assessee had timely filed return of income disclosing an income of Rs. 1,57,40,468/- & Rs. 1,77,85,850/- respectively from contractual business of net profit of 5.48% and 4.55% respectively. The AO after survey was conducted on 31.07.2015 after issuing 148 notice has framed, the reassessment making disallowance as noted above u/s 40(a)(ia) and section 40A(3) of the Act as well as addition u/s 69C of the Act. On appeal, the Ld. CIT(A) has deleted the additions made u/s 40(a)(ia), sec. 40A(3) & sec. 69C of the Act and thereafter has rejected the books of accounts of the assessee and estimated the net profit at 8%. The main plea of the assessee is that the net profit of 8% is very high and relied on certain decisions of the Tribunal wherein lesser net profit has been accepted by the Tribunal in the cases of Contractors. We note that the Revenue has not challenged the decision of the Ld. CIT(A) and only the assessee is in appeal before us against the action of the Ld. CIT(A). We note that the assessee has not challenged action of the AO in rejecting the books of accounts. Therefore, the only issue is whether the estimation of net profit by the Ld. CIT(A) is reasonable or not. We note that in order to arrive at net profit of 8% to Ld. CIT(A) has taken into account, the

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net profit percentage of assessee from A.Y. 2011-12 to 2014-15. We note that for easy understanding, we reproduce the chart of net profit percentage of the assessee from A.Y. 2011-12 to 2014-15 which is as under:

5. We note that the Ld. CIT(A) has given notice to the assessee vide order sheet dated 15.05.2017 wherein he conveyed his desire to reject the books of accounts based on the discrepancies noted therein and his intention to estimate net profit at 8%. Pursuant to which, the assessee pleaded that the estimate of net profit should be determined at 5%. We note that the Ld. CIT(A) has estimated the income at 8% instead of 5.79% declared by the assessee (excluding material supplied by the Government) and also it was made clear by the Ld. CIT(A) that assessee will get deduction at Rs. 7,23,906/- and Rs. 53,543/- which were added by the AO though not contested by the assessee. We note that the Ld. CIT(A) has not taken into consideration any comparable cases similar to that of assessee to determine net profit at 8%. We note that from the assessee's own performance and net profit declared from A.Y. 2011-12 to 2014-15, an estimate of 6.75% on the contractual turnover of the assessee could be just, fair and reasonable and we order accordingly. Likewise for A.Y. 2014-15, we direct the estimation of the net profit at 6.75% on the contractual turnover of the assessee."

8. Since the net profit @6.75% has been estimated by the Tribunal in the assessee's own case, we, therefore, respectfully following the same, uphold the finding of the Id. CIT(A) of rejecting the books results and estimate the net profit rate @ 6.75% for the year under appeal on the gross turnover and the addition is sustained only to the extent of the difference between the net profit rate of 6.75% estimated by us as against the net profit declared by the assessee in its income tax return.

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Accordingly, the assessee's appeal is partly allowed and the that of the revenue is dismissed for Assessment Year 2013-14.

9. As far as Assessment Year 2015-16 is concerned, only the assessee is in appeal and the issue remains the same regarding the estimation of net profit where the assessee has challenged that the Id. CIT(A) has erred in estimating the net profit @8%. We considering our decision for Assessment Year 2013-14 as well as the decision of this Tribunal in the assessee's own case for Assessment Year 2011-12 and 2014-15, estimate the net profit for Assessment Year 2015-16 @6.75% and partly allow the appeal of the assessee.

10. In the result, appeal of the assessee for Assessment Year 2013-14 & 2015-16 are partly allowed and the cross-appeal filed by the revenue is dismissed.

Order pronounced in the Court on 14th December, 2023 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated 14/12/2023

SC Sarma

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata