

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6074/Del/2019 : Asstt. Year : 2015-16

Yogis Angels Entertainment & Décor Pvt. Ltd., 506, Cabin-6, Indraprakash Building, 21, Barakhamba Road, New Delhi-110001	Vs	Income Tax Officer, Ward-27(4), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACY3861E		

Assessee by : Sh. Samyak Jain, Adv. &

Sh. Mukesh Jain, CA

Revenue by : Ms. Sapna Bhaita, CIT-DR

Date of Hearing: 11.10.2023

Date of Pronouncement: 04.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-28, New Delhi dated 21.05.2019.

2. Following grounds have been raised by the assessee:

"1.1 That under the facts and circumstances of the case, the Ld. CIT(A) grossly erred in law as well as on merits in estimating the net profit @8% and consequentially in upholding addition of Rs. 25,62,738/-.

1.2 That Ld CIT(A) has erred in law and facts in not considering the income already declared by the assessee.

1.3 That without prejudice, the net profit if any should not be more than 2.18% being average net profit for last 3 years.

1.4 That no proper and reasonable opportunity of hearing has been allowed.

2.1 That under the facts and circumstances of the case, the Ld. CIT(A) grossly erred in law in upholding addition of Rs. 33,25,689/- for disallowance U/s. 43B.

2.2 That no addition U/s. 43B should have been made once the profit is estimated and books of accounts are rejected U/s. 145(3).

2.3 That without prejudice, no disallowance U/s. 43B should have been made on merits of the case.

3. That under the facts and circumstances, no interest U/s. 244A, 234B & 234C should have been charged, in any case, the calculations are erroneous and excessive."

3. The assessee company was engaged in the business of event management services and provides artists for performance in party and weddings. The assessee filed return of income on 30.09.2015 declared total income of Rs.5,90,560/-.

4. Brief facts of the grounds are that the Assessing Officer made addition of Rs. 37,08,501/- @ 12.5% of the turnover of the assessee by rejecting the books of accounts due to non-production of vouchers of expenses. The Ld. CIT(A) upheld the addition made by the Assessing Officer to the extent of 8% of the turnover.

5. The Id. AR submitted that it is settled position of law that in case of rejection of books of accounts by the Assessing Officer, the estimation of income should be made by taking reference to the past history of the assessee. In the instant case the average net profit ratio of the assessee by past history comes @ 2.18% (refer table below):

Particulars	FY 2014-15	FY 2013-14	FY 2012-13
Turnover	3,20,34,233.00	3,35,25,422.00	6,98,42,940.00
Other income	-	6,68,918.00	2,47,000.00
COS/Direct Expenses	35,84,118.00	48,66,503.00	2,77,73,872.00
Indirect Expenses	2,83,14,508.00	2,86,63,967.00	3,60,92,346.00
PBT	1,35,607.00	6,63,870.00	62,23,722.00
Tax expenses	1,27,045.00	7,35,089.00	20,74,944.00
NP	2,62,652.00	-71,219.00	41,48,778.00
NP Ratio	0.82	0.21	5.94

6. The Id. AR placed reliance on following judicial pronouncements:

- L.P.R. Construction Vs. DCIT, Circle-1 2021 (7) TMI 796 - ITAT ALLAHABAD.
- Om Prakash Singh Vs. ACIT, Circle-3, Mathura 2019 (8) TMI 830 - ITAT AGRA.
- CIT, Patiala Vs. M/s Hind Agro Industries 2015 (12) TMI 1407 - ITAT CHANDIGARH

7. On the other hand, the Id. DR submitted that the assessee has not produced any details of the expenses and the provisions of Section 145(1) of the Income Tax Act, 1961 have been duly and rightly invoked by the Assessing Officer. The assessee inspite of giving sufficient opportunities, did not submit relevant details and hence the profits have been rightly estimated @ 12%. The Id. DR argued that the contraction of the profits to 8% by the Id. CIT(A) itself is not acceptable.

8. Heard the arguments of both the parties and perused the material available on record.

9. We find that no bills & vouchers have been produced in support of the claim of the assessee. The Id. CIT(A) has only taken cue from the provisions of Section 44AD but not applied said section. The Id. CIT(A) estimated based on the entirety of the business. Having gone through the record, in the absence of any other details, we hold that the interest of justice would be well served by directing the revenue authorities to "estimate" profit @ 5%. The appeal of the assessee on this ground is partly allowed.

10. With regard to the disallowance u/s 43B of the Act amounting to Rs 33,25,689/-, it was submitted that the Assessing Officer made the addition u/s 43B of Act on account of following expenses payable as on 31.03.2015:

Particulars	Amount
PF & ESI payable	15,00,000/-
TDS Payable	16,56,547/-
Service Tax (Reverse Charge)	77,798/-
Service Tax	91,344/-
TOTAL	33,25,689/-

11. It was submitted that the amount of Rs. 15,00,000/- payable to PF & ESI does not belong to relevant year rather it belongs to earlier years. Hence, we hold that the revenue authorities erred in making addition on account of PF & ESI because assessee did not claim this as a deduction in the year under consideration.

12. With regard to the non-payment of TDS u/s 43B of the Act, we hold that there is a separate section 40(ia) of Act which

provides that if an assessee fail to deduct any tax at source or after deduction fails to deposit the said TDS to the Govt, account before due date of filing of return of income u/s 139(1) of the Act then the AO may made addition equivalent to 30% of the amount on which such tax deducted. Section 43B mainly covers expenses that are allowed to be claimed as deduction only in case of actual payment. TDS is not an expense but a tax which is deducted on the behalf of the deductee and deposited to the government's treasury. In the Instant case the Assessing Officer made addition u/s 43B of the Act which do not support the action of the Assessing Officer. Hence, the same is directed to be deleted.

13. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 04/01/2024.

Sd/-

(Saktijit Dey)
Vice President

Dated: 04/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR