

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 10/Kol/2024
Assessment Year: 2008-09

Rajesh Agarwal 67A, Sreedhar Roy Road Kolkata - 700039 [PAN: ADHPA3042Q]	Vs	Income Tax Officer, Ward - 25(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Anil Kochar, Advocate
Revenue by :	Shri S.B. Chakraborty, JCIT

सुनवाई की तारीख/Date of Hearing : 06/03/2024
घोषणा की तारीख /Date of Pronouncement: 01/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "Id. CIT(A)"] dt. 06/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2008-09.

2. The sole issue involved in this appeal is as to whether the Id. CIT(A) erred in confirming the penalty levied by the Assessing Officer at Rs.3,48,398/- u/s 271(1)(c) of the Act. At the outset, the Id. Counsel for the assessee submitted that the penalty has been levied on the addition made by the Assessing Officer on estimated basis. He further submitted that the Id. Assessing Officer estimated the profit @ 12% which was further scaled down by the Id. CIT(A) @10%. Further the Hon'ble Tribunal vide order dt. 04/10/2017 had directed to apply the rate of 8%. He submitted that in the light of the settled judicial

precedents, when the additions are made on estimate basis, the penalty u/s 271(1)(c) of the Act, is not leviable.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

3. We have heard rival contentions and perused the material placed on record. We find that the assessee is an individual engaged in the business of construction acting as a labour contractor. Income of Rs.1,84,600/- declared in the return for Assessment Year 2008-09 filed on 16/03/2008. After examining the records for Assessment Year 2011-12 and on the basis of some information available in Form 26AS, the assessee's case was re-opened. While examining the records, the Id. Assessing Officer came to the conclusion that the assessee has shown lower profits. He accordingly rejected the book results and estimated the profit @ 12%. We find that while estimating the income @12%, the Id. Assessing Officer has not made any specific reference to any expenditure excess booked or any undisclosed income. The observation made by the Assessing Officer are general and specifically no discrepancy has been mentioned in the assessment order which can show that the assessee has furnished inaccurate particulars or concealed particulars of income. Addition has been made accordingly on estimate basis and further the estimation of the Id. Assessing Officer was not found to be totally correct and was scaled down by the Id. CIT(A) from 12% to 10% and then by this Tribunal from 10% to 8%. It is thus evident that the addition made is on estimate basis without any specific reference or observation of the lower authorities that the

assessee has furnished inaccurate particulars of income or concealed any income. Under these given facts and circumstances, we are of the view that the penalty u/s 271(1)(c) of the Act is not leviable. We accordingly set aside the finding of the Id. CIT(A) and delete the penalty u/s 271(1)(c) of the Act.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 1st April, 2024 at Kolkata

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 01/04/2024

DR. Manish Borad

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

1. अपीलार्थी / The Appellant
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