

| 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. 958/Kol/2023
Assessment Year: 2010-11

Vijay Agarwal Room No. 4/17 Suhatta Shopping Complex City Centre Durgapur - 713216 [PAN : ACIPA3420C]	Vs	Joint Commissioner of Income Tax, Range - 56, Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri Archana Gupta, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 16/04/2024
घोषणा की तारीख /Date of Pronouncement: 02/05/2024

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. 18/07/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2010-11.

2. Through the grounds of appeal, the assessee has challenged the fining of the Id. CIT(A) confirming the addition made at Rs.12,89,720/- towards disallowance of sand purchase, disallowance of rent paid at Rs.3,72,000/-. Further additional grounds have also been raised by the assessee stating that the Id. Assessing Officer erred in disallowing various items instead of estimating net profit even when the books of accounts were treated as bogus.

3. At the outset, the Id. Counsel for the assessee submitted that the Id. Assessing Officer has rejected the book results and the only option available with the Id. Assessing Officer was to estimate the profits. However, the Id. Assessing Officer erred in making disallowance of sand purchase and rent paid which is not justified. He also submitted that the assessee declared net profit rate (NPR) of 7.24% which is quite good in the civil constructions business.

On the other hand, the Id. D/R, supported the orders of the lower authorities and she further added that the Id. Assessing Officer had carried out specific investigation and examination of the ledger account of the assessee and has found discrepancies for which the alleged additions have been made.

4. We have heard rival contentions and perused the material placed before us. We observe that the assessee is carrying out the civil construction business under the sole proprietorship concern, namely, M/s. Sinhotia Earth Movers. Income of Rs. 45,24,500/- declared in the return for Assessment Year 2010-11 furnished on 18/09/2011. Gross turnover during the year declared at Rs.6,35,22,045/- and net profit rate works out to 7.24%. After the case being selected for scrutiny after necessary approval and issuing of valid notices, during the course of hearing, assessee furnished cash book and ledger account books. The Id. Assessing Officer has carried out the scrutiny proceedings examining all the records including books of accounts and was not satisfied with the explanation offered by the assessee in regard to the queries and concluded that the four ledger accounts showing credit entries are vague and considered the ledger account as bogus. This observation of

the Id. Assessing Officer is sufficient enough to indicate that he has rejected the book results. Even after arriving at this conclusion that books of accounts are liable to be rejected, he had completed the assessment proceedings making specific disallowance of civil material purchases and rent expenses.

4.1. It has been judicially settled in plethora of judgments that if the books of accounts are rejected, then the option available with the assessing authority is to make a best judgment assessment and estimate the reasonable profits but in no case after rejecting the book results, the additions can be made for the items of profit and loss account.

5. We notice that the assessee is offering net profit rate of 7.24% and during the course of hearing, reference was made to various decisions of Tribunal including that in the cases of *Dilip Kumar Das & Sons* in ITA No. 2514/Kol/2019 & ors. dt. 14/12/2023; *Madan Mohan Bhattacharjee vs. ACIT* in ITA No. 397/Kol/2019, order dt. 24/07/2019; *ITO vs. M/s. Apex Goods Pvt. Ltd.* in ITA No. 504/Kol/2012, order dt. 01/07/2015; wherein considering similar type of issue where books of accounts were rejected, this Tribunal has estimated the profits of the civil construction business @ 6.75%, 5.25% and 6% respectively. Considering the decisions referred by the Id. Counsel for the assessee, we under the given facts and circumstances and also considering the discrepancy observed by the Id. Assessing Officer in the books of accounts, deem it proper to estimate the net profit of the assessee @7.50% as against 7.24% declared by the assessee and sustain the addition of Rs.1,89,653/-. Accordingly, the finding of the Id. CIT(A) is set aside and additional ground raised by the assessee is partly allowed.

6. Now, dealing with the remaining grounds of appeal will be merely academic in nature as they are rendered infructuous.

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

Order pronounced in the Court on 2nd May, 2024 at Kolkata.

Sd/-

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 02/05/2024

S.S.P.

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