

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

**BEFORE,
SHRI G.S.PANNU, VICE PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2586/Del/2022
(ASSESSMENT YEAR 2018-19)**

Haryana Builders H.No.92 Sector-16-17 Hisar-125 001 Haryana PAN-AADFH 5524R (Appellant)	Vs.	Income Tax Officer Ward-1, Hisar (Respondent)
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Appellant by	Sh. Nitin Kanwar, Adv. & Sh. Rohit Kumar, Rajiv Kumar, Adv.
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	03/05/2024
Date of Pronouncement	24/07/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order dated 26/08/2022 of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], for Assessment Year 2018-19. Grounds taken in this appeal are as under:

"1. That on the facts and circumstances of the case, the order passed by the authorities below is bad both in the eye of law and on facts.

2. The authorities below erred in applying net profit rate of 8% on the turnover of Rs.17,05,50,582/- on estimation basis. The net profit of 8% in case of civil contractor engaged in government need not to have been applied in the given case.

3. On the facts and the circumstances of the case, The learned CIT(A) has erred both on facts and law in holding the assessment made by learned A.O. @ 8% on gross receipts of business at Rs. 1,36,44,047/- .

4. The learned CIT (A) is totally unjustified in dismissing the appeal of the assessee and holding the order of Ld. A. O. at a turnover of Rs.1,36,44,047/- on the basis of disallowances of various expenses considering it excessive in spite of clarification given by the assessee that the same is fair and reasonable.

5. (i) On the facts and under the circumstances of the case, the learned CIT(A) erred in law and on facts in confirming the addition made on estimation basis on account of expenditure incurred for salary & wages to the tune of Rs.3,37,24,760/- without properly appreciating the submission of the appellant.

6. (ii) On the facts and under the circumstances of the case, the learned CIT(A) erred in law and on facts in confirming the addition made on estimation basis on account of expenditure incurred for power & fuel to the tune of Rs. 1,99,12,358/- without properly appreciating the submission of the appellant.

7. (iii) On the facts and under the circumstances of the case, the learned CIT(A) erred in law and on facts in confirming the addition made on estimation basis on account of expenditure incurred for freight charges to the tune of Rs.45,21,030/- without properly appreciating the submission of the appellant.

8. (iv) On the facts and under the circumstances of the case the authorities below erred in taking closing stock at Rs.37,06,425/- without properly appreciating the submission of the appellant.

9. 5.That the notices issued during assessment proceedings is bad in law.

10. 6.That the order passed by Authorities below is also erroneous, illegal and against the principals of Natural Justice and Equity and the well settled laws of the land.

11. 7.That the appellant craves leave of the Honorable Income Tax Appellate Tribunal to add, modify substitute, delete any grounds of appeal at any stage of the proceedings before the honorable Income Tax Tribunal.”

2. The facts in brief are that, assessee who was engaged in the business of Government Civil work contract filed return of income declaring total income at Rs. 9,03,260/- which was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short). The return filed of assessee was selected for scrutiny through CASS, notice u/s 143(2) of the Act was issued. The assessment order came to be passed on 08/04/2021 u/s 143(3) of the Act r.w.s.143(3A) & 143(3B) of the

Act by making the addition of Rs. 1,27,40,187/- by estimating income at 8% on the total turnover of Rs.17,05,50,582/- by disallowing various expenses.

3. Aggrieved by the order of Ld. AO, the Assessee preferred an appeal before the Ld. CIT(A) and the ld. CIT(A) vide order dated 26/08/2022 dismissed the appeal filed by the Assessee. As against the order of the Ld. CIT(A) dated 26/08/2022, the Assessee preferred the appeal on the grounds mentioned above.

4. The Ld. Counsel for the Assessee submitted that the assessment has been framed by estimating income at 8% on the gross receipt without rejecting the books of account, therefore, by relying on the various judicial pronouncements submitted that the order of the Ld. CIT(A) is liable to be set aside. Further submitted that, the Ld. CIT(A) not justified in dismissing the appeal and upholding the order of the Ld. AO, which was made by disallowing various expenses considering the same as excessive in spite of clarification given by the assessee.

5. Per contra, the Ld. DR submitted that the assessee had not replied to any of the show cause notices and only replied to the show causes notices along with draft assessment order proposing estimation of income at 8% of gross receipts. The Ld. AO though specifically not rejected the books of account but disbelieved the clarifications given by the assessee and indirectly rejected

the books of account, therefore, submitted that the order of the lower authorities require not interference.

6. We have heard both the parties and perused the materials available on record. In the return of income, the Assessee had admitted gross receipt of Rs.17,05,50,582/- which included interest income of Rs.7,14,391/-. A notice u/s 142(1) of the Act was issued and also reminders were issued but the assessee had not completed the same. The assessee filed reply to the show cause notice along with draft assessment order proposing estimation of income at 8% of the gross receipts by producing profit & loss account wherein the assessee claimed salary and wages to the tune of Rs.3,37,24,760/-. The assessee had also furnished the ledger account, profit and loss account. The Ld. A.O. found that the expenses claimed by the Assessee are disproportionate and excessive. Accordingly, estimated income of the assessee at 8% in following manners:-

“5.2 From this ledger account it is clear that out of the total salary and wages of Rs. 33431260/-, a sum of Rs.32493130/- (more than 97%) had been paid by cash. The assessee had not furnished any other materials in support of its claim. Though, payment of wage to laborers on daily and weekly basis not exceeding Rs.20,000/- in cash is common in this nature of business, in this case, the payment had been made on monthly basis only. Hence, the salary/wages exceeding Rs.20,000/- should have been paid other than by cash under section 40A(3) of the Act. Further, during the previous financial year, the total revenue receipts and salary/wage expenses was Rs.7.95 crores and Rs.55.8 lakhs (ratio was roughly 14:1) only, whereas, during the financial under consideration the total revenue/receipts and salary/wage expenses were Rs.16.98 crores and Rs.3.34 crores (Ratio was roughly 5:1) respectively which is disproportionate and excessive.

5.3 In the profit and loss account the assessee had debited Rs.12148538/- under narration ‘Govt. & other Dues. The assessee was required to explain the nature of expenses and furnish the evidences for the claim of Govt. & other dues vide SI. No.7 in the notice under section 142(1) of the Act issued. The assessee furnished the ledger account for the same on 23.03.2021. On verification of the same, the following amounts were reported as

<i>11.09.2017</i>	<i>To Security: XEN, Prov. Div.PWD B&R, Hansi</i>	<i>Journal Rs.3239573/-</i>
<i>23.10.2017</i>	<i>To Security: XEN, Prov.Div.03,PWD B&R Hsr</i>	<i>Journal Rs.2989329/-</i>
<i>12.11.2017</i>	<i>To Security: ZEN, PWD B&R Nohar</i>	<i>Journal Rs.1332370/-</i>
<i>15.02.2018</i>	<i>To DAC & Security with Govt. Dept.</i>	<i>Journal Rs.315943/-</i>
<i>15.02.2018</i>	<i>To Security, XEN, PWD B&R Rohtak</i>	<i>Journal Rs.620300/-</i>

As the assessee did not explain the nature of expenses and did not furnish any material evidences in support of its claim, the above amounts appeared to be the amounts deducted by the person responsible for making payment to the assessee towards security deposit which would be paid to the assessee after the specified period. The amount of expense during the previous financial year under the same head was Rs.4614746/- only.

5.4 The assessee had debited Rs.4521030/- towards freight charges in the profit and loss account which was not appeared in the earlier year. The assessee was required to explain the nature of expense with relevant material evidences for the claim of freight charges vide SI. No.6 in the notice under section 142(1) of the Act issued. The assessee furnished the ledger account for the same on 23.03.2021. On verification of the same, it is noticed that the following amounts were debited in the month of March 2018:

12.03.2018	To Axis Bank Ltd A/c	Payment	Rs.	500000/-
27.03.2018	To Axis bank Ltd A/c	Payment	Rs.	500000/-
31.03.2018	To Rahender Singh Contr.	Journal	Rs.	3300000/-

The assessee did not explain the nature of expenses and did not furnish any material evidences in support of its claim. Considering the nature of business of the assessee, the claim was not justifiable and no such claim in the previous financial year.

5.5 The assessee was required to furnish the evidences for the claim of Power and Fuel expenses of Rs.19912358/- and day book for the financial year 2017-18. The assessee did not furnish the details. In respect of the new depreciable assets, the assessee was required to furnish a copy of the bill and payment details. The assessee replied that it purchased old JCB Machine and Old Truck. But no material evidence was produced. The AXIS Bank account furnished by the assessee was incomplete and SBI bank account was not furnished.

6. If the Assessing Officer entertains any doubts as to correctness or completeness of any claims in the return of income filed by the assessee, it is the assessee's duty to satisfy the assessing officer by producing necessary materials. The burden is on the assessee to prove the facts, necessary to establish any claim of deduction, loss or exemption. In this case, the assessee had failed to establish the genuineness of the claims made in the ITR with relevant material evidences despite repeated reminder letter issued by the department.

7. In the absence of proper compliance and production of relevant materials as may be enable the Assessing Officer to compute its total income, no other way except to assess the income on estimate basis. After excluding the bank interest of Rs.714391/- from the admitted total income, the business income admitted was Rs. 188869/- only which works out to 0.11%. This admitted profit is very low in comparison with the average profit in the business code.

8. In number of cases, the Apex Court has held that the estimation of income must be fair, just and reasonable. Considering the facts and deficiencies discussed in supra, the business income of the assessee is estimated at 8% of the total credits to the profit and loss account of Rs. 170550582/- which works out to Rs.13644047/- is assessed as business income of the assessee firm.

9. The assessee was required to furnish the details of outstanding unsecured loan credit&rs and sundry creditors as on 31.03.2018 along with party ledger and establish the identity and capacity of creditors with confirmation from them vide item No. 12 of the Notice under section 142(1) of the Act issued on 03.11.2020. In the schedules appended to the Audit Report in Form 3CD, the assessee had claimed unsecured loans to the tune of Rs.7926836/- as on 31.03.2018 as detailed below:

Dharam Pal	Rs. 965000/-
Ram Ji	Rs. 45000/-
Ram Niwas Kaswan	Rs. 200000/-

Subhash	Rs. 500000/-
Mrs. Aarti	Rs. 50000/-
Harpal Ram	Rs. 800000/-
Kaswan Nirman Co.	Rs. 1664942/-
Panna Lai	Rs. 700000/-
Rajesh Kumar	Rs. 749911/-
Rajesh Ghotia	Rs. 2251983/-
TOTAL	Rs. 7926836/-

The assessee had not established the identity of the creditors. However, it furnished party ledger account for the following persons:

Mrs. Aarti	Rs. 50000/-
Harpal Ram	Rs. 800000/-
Kaswan Nirman Co	Rs. 1664942/-
Panna Lai	Rs. 700000/-
Rajesh Kumar	Rs. 749911/-
Rajesh Ghotia	Rs. 2251983/-
TOTAL	Rs.6216836/-

Therefore, the balance of Rs. 17,10,000/- remains unexplained.

11. Similarly, in the Balance sheet appearing in the ITR, the assessee had reported the sundry creditor of Rs. 24714098/-. On 23.03.2021, the assessee uploaded the party ledger account for the same. It had not established the identity and capacity of the creditors. As per the party ledger account the amount outstanding as on 31.03.2018 was Rs. 24270098/- only which is detailed as under:

M/s Ganpati Bitumens	- Rs. 12276205/-
M/s Hannu Stone Crusher	-Rs. 222859/-
M/s. Galaxy Bitumen	- Rs. 11771034/-
TOTAL	- Rs. 24270098/-

Hence, the difference of Rs.4,44,000/- is unexplained.

B) In the Balance sheet as on 31.03.2018 appearing in the ITR, the assessee had reported the closing stock as on 31.03.2018 was NIL. In the profit and loss account for the financial year 2018-19 appearing in the ITR for the assessment year 2019-20 filed on 21.10.2019, the assessee had reported the opening stock at Rs.3706425/-. Hence, the closing stock as on 31.03.2018 of Rs.3706425/- had not been disclosed.

C) The estimation of income at 8% of the gross receipts, which resulted in addition of Rs.12740787/- (Rs. 13644047/- minus Rs.903260/-) to the returned income would offset the discrepancies discussed in para 9 to 11 above and hence no further additions were made in this regard.”

7. The Ld. CIT(A) confirmed the addition made by the Ld. CIT(A). It is found that during the assessment proceedings, the AO specifically pin pointed the

defects in the financial statement and details furnished by the assessee. The AO arrived subjective satisfaction that the books of account are not reliable and it does not deduce true picture of the assessee's income. Thus, it is to be concluded that AO had rejected the books of account, though, expressly not stated in the assessment order. There is no prescribed format to reject the books of account in a particular manner. Hence, we do not find any merit in the argument of the Ld. AR. However, the estimation of the income at 8% which is higher inside and provisions for estimation of income at 8% is applicable to presumptive taxation. In view of the matter in the interest of justice, it is appropriate to remit the file to the AO for fresh consideration with a direction to the Assessee to produce the supporting documents for the claim of the expenditures. Accordingly, we partly allowed the appeal of the assessee and remand the matter to the file of the AO for *do novo* adjudication.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open Court on 24th July, 2024

Sd/-
(G.S.PANNU)
VICE PRESIDENT
Dated: 24/07/2024
Pk/R.N, Srps

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI