

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1374/Del/2022
Assessment Year: 2014-15

Xplorer Services Private Limited Plot No.3, First Floor, Sarhaul Sector-18, Gurgaon PAN No. AAACX0611M	Vs.	DCIT Circle – 27 (2) Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Rano Jain, Advocate Ms. Mansi Jain, CA
Respondent by	Ms. Monika Dhami, CIT DR

Date of hearing:	01/08/2024
Date of Pronouncement:	06/09/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 24.06.2019 pertaining to A.Y.2014-15 and arises out of the assessment order dated 21.12.2016 under section 143(3) of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. The appeal filed by assessee is time barred by 293 days. The assessee has filed an application with an affidavit to condone the delay in which he stated that he did not prefer the appeal due to cost and time involved in order avoiding the litigation but the assessee has received the show cause notice u/s 271(1) of the Act. The assessee has filed the answer of the notice and filed this appeal with the application of condonation. He has also filed the additional ground for condonation of the delay. Grounds taken by the assessee are sufficient delay in filing appeal is condoned and appeal is admitted for hearing on merit,

3. Aggrieved by the order of the lower authorities, the assessee is in appeal before us by raising the following grounds:-

“1. That the order of the Learned Commissioner of Income Tax (Appeals) – 28 New Delhi [hereinafter referred to as CIT(A)] is bad in law and on facts.

2. That the learned CIT(A) failed to take cognizance of the fact that the addition was done on estimation basis considering the net profit on an average of last 4 years (estimation basis) rather than factual findings and without accepting the audited books of account and considering that the records were destroyed in fire. The addition was not done on inaccurate particulars or concealment of income.

3. *That any consequential relief to which the appellant may be entitled to under the foregoing grounds of appeal may kindly be granted to the appellant.”*

4. The brief case of the assessee is that the company is engaged in the profession of Topographical surveys, geotechnical investigation, river survey and preparation of detailed project reports and civil & structural designs. The company filed the return of income, declaring at Rs 90,61,270/- which was selected for scrutiny. A notice was issued to the assessee and the Ld AR of the assessee attended the proceedings from time to time. The assessee has declared the Net Profit Ratio 14.44 % for the A.Y.2014-15. The assessee has failed to provide the bills and vouchers and other documents before the AO. He has stated that records were destroyed in the fire accident on 2nd December 2014 and submitted the copies of the complaint, FIR, and copy of the certificate from the fire department. The assessee has submitted the Net Profit Ratio of the previous 4 years other than the current A.Y.2014-15. The AO has calculated the Net Profit Ratio on the fourth years average profit ratio and made the addition of Rs 44,88,292/-. Aggrieved the order of the AO the assessee has filed the appeal before Ld. CIT(A) who vide his order dated 24-06-2019 the dismissed the appeal against which the assessee is in appeal before us.

5. We have heard the parties and perused the material available on record.

6. In this case Assessing Officer has calculated the Net Profit Ratio of the previous four year provided by the assessee as under;

Sr. No.	A.Y.	Professional Receipts	Net Profit	Net Profit Ratio (%)
1	2010-11	28,35029	5,73,407	20.22
2	2011-12	96,13,096	18,51,894	19.29
3	2012-13	1,69,58,639	37,24,319	21.96
4	2013-14	1,69,06,061	31,81,426	18.82
Average of Net Profit Ratio		6,68,00,000	90,00,000	20.07

7. A perusal of the assessment order reveals that the AO has made the addition under following calculation :-

Professional receipts for the A.Y.2014-15- Rs.6,75,11,522/-

The calculation of the profit as per average of Net Profit Ratio;

(Rs 6,75,11,522*20.07/100=1,35,49,562/-

Profit calculated by the assessing officer Rs. 13549562/-

Profit declared by the assessee as per the Return of Income

Rs. 90,61,270/-

Addition

Rs. 44,88,292/-

8. The Ld CIT(A) in his order observed as under :-

“5. I have considered the facts of the issue, basis of estimation of profit by AO during the assessment proceedings. As can be seen from the assessment order that appellant failed to produced the books of account and supporting bills and vouchers before AO despite of giving opportunities by him on the ground that the said books of account and bills and vouchers have been destroyed in fire. In absence of such books of account, bills and vouchers, AO rejected the book profit and estimated the net profit by taking the average net profit of earlier four years in the case of appellant only. In such situation, when appellant failed to produce the primary evidence in the form of original bills and vouchers, the genuineness of expenses claimed and net profit shown by it remain unverified. The transactions shown in the audit report and P & L account have no sanctity unless they are backed by the primary and original evidence in the form of bills and vouchers. It becomes more important when there is steep fall in the NP ratio at 14.44% during the year under consideration against the Net Profit of 18.82% in the immediate preceding year and 21.96% in earlier year. In such situation, in absence of books of account, AO was justified in estimating the net profit by taking the average net profit ratio of earlier years @ 20.7% on the total turnover of Rs.6,75,11,552/-. I, therefore, confirm the

addition made by AO and dismiss the grounds taken by appellant.”

9. The Ld AR has submitted that the Learned AO has made the addition on the estimate basis considering the net profit on an average of last four years without accepting the audited books of account. The AO has not considered that the books of accounts were destroyed in fire. He has filed the copy of FIR and copy of certificate from the fire department to prove the contention of the assessee. He has further submitted that all the documents related were filed by the assessee before the AO. In support of his contention, he has filed a Paper book and additional paper book.

10. The Ld. AR has further submitted that the AO has made the addition primarily for not producing vouchers which were destroyed during the accidental fire occurred due to no fault of the assessee. The assessee has filed the proof of fire at his premises by furnishing the copy of FIR and the certificate of the fire department. The assessee has provided the details of the documents and audited balance sheet for last five year to assess the net profit and loss ratio. In the absence of the documents the ld AO should considered the average of net profit ratio of the last five years. The details provide by assessee as under:-

S.No.	Financial Year	Net Profit (%)
1	2008-09	Loss
2	2009-10	20.22
3	2010-11	19.29
4	2011-12	21.96
5	2012-13	18.82
	Average	16.05

11. The Reliance has placed on the following decisions;

1. *In the case of ITA No. 1285/Del/2022 A.Y 2007-08 Asstt. Commissioner of Income Tax Vs. M/s. Moets Bar- B-Cue.*
2. *Hon'ble High Court of Rajasthan before the D.B. Income Tax Appeal No.56/2015 Principal Commissioner of Income Tax, Jaipur-2, Jaipur V. M/s. Hues India Pvt. Ltd.*
3. *Hon'ble ITAT Delhi ITA No. 4126/Del/2010 Assessment Year : 2007-08 Shri Prem Chand Vs. Income Tax Officer, Ward- 29 (4), New Delhi*
4. *Hon'ble Income Tax Appellate Tribunal – Delhi in Raj Kumar, Faridabad vs. Department of Income Tax on 22 May, 2015. ITA No. 4165/Del/2009*

12. The Ld. DR has submitted that the assessee has not produced the bills and vouchers and other documents during

the course of assessment. The assessee has stated that all the documents were destroyed in a fire he has failed to produce the books of account before the AO. The addition was made on the basis of the average of Net profit loss of the 04 years average so he pleads that the impugned order be upheld.

13. The AO has directed the assessee to file the Net Profit ratio for the previous five year and he provided the same to the AO but the AO took the average profit ratio for last four years and left the loss for the A.Y. 2008-09. The AO has made additions by considering net profit ratio of last 4 years in lieu of 05 years. He should have made additions after ascertaining average of 5 years. The assessment is made without taking average of 05 years which was not proper because the AO directed the assessee to provide the previous 05 years Net Profit ratio. The Net Profit ratio, therefore should have been assessed after ascertaining average of 05 years, had the assessee shown loss in place of profit. The matter is remanded back to the AO with this direction to ascertain Net Profit ratio for the A.Y. 2014-15 based on the net profit and loss ratio of the last 05 years provided by assessee.

14. In the result, the appeal of assessee is allowed for the statistical purpose.

Order pronounced in the open court on 06.09.2024.

Sd/-
(DR. B R R KUMAR)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .09.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI