

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD'SMC' BENCH, ALLAHABAD**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.77/ALLD/2020
A.Y. 2016-17

M/s Jyoti Erectors Pvt. Ltd., Near Amar Ujala Press GT, Road, Bamrauli, Allahabad, U.P.	vs.	DCIT, Circle-2, Allahabad
PAN:AACCJ0409K		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	21.10.2024
Date of pronouncement:	27.12.2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This appeal has been filed against the order of the Id. CIT(A), Allahabad under section 250 of the Income Tax Act, 1961 on 18.02.2020. The grounds of appeal preferred by the assessee were as under:-

"1. That in any view of the matter the assessment order dated 30/12/2018 framed u/s 143(3) of the IT Act is bad both on the facts and in law and vide such order the income so determined at Rs. 63,12,477/- in arbitrary manner is unjustified and wrong hence the declared income of Rs. 18,86,600/- on the basis of closed books of accounts should have been accepted in the facts and circumstances of the case.

2- That in any view of the matter the addition of Rs. 44,25,877/- as made by the assessing officer by applying a net rate of 7 percent on declared receipt of Rs. 9,01,78,242/- by ignoring closed books of accounts is highly unjustified and wrong and also provisions of section 145(3) of the IT Act has been wrongly invoked. Moreover no comparable case has been cited by the assessing officer in the assessment order for applying such higher net profit rate nor past history in assessee own case was considered hence the addition so made by the Assessing Officer and confirmed by CIT(A) is highly unjustified.

3- That in any view of the matter the assessing officer was wrong in making the addition of Rs. 44,25,877/- by relying on estimated figure recorded in statement of one partner Sri D.S. Gupta without any corroborative evidence or any material brought on record ignoring closed books of accounts and audit report, hence the addition as made by the Assessing Officer and confirmed by CIT(A) is highly unjustified.

Subsequently the Assessee amended its grounds of appeal and prayed that they may be substituted as under :

1.. That in any view of the matter the learned CIT appeal was not correct in restricting the net profit rate to 5.25% as against 7% as applied by the assessing officer on the declared receipt when no defect pointing out in books nor any comparable case cited by the assessing officer and simply on presumption net rate as applied is not correct.

2. That in any view of the matter the learned CIT appeal simply on presumption basis restricted net profit rate to 5.25% as against to 2.06% as disclosed by the assessee on basis of closed books of accounts.

3. That in any view of the matter both the two lower authorities were wrong in not considering the past record in assessee is own case, nature of business activities which is sub-contractor, books of account are maintained which are audited, no defect pointed out in books, proviso to section 145(3) of the Act wrongly invoked hence the trading result shown by the assessee liable to be accepted.”

2. The facts of the case are that a survey under section 133A of the I.T. Act, 1961 was conducted on the premises of the assessee on 16.03.2016. During the course of the survey, a statement of the partner Shri. Deshraj Gupta, was recorded under section 131, in which he stated that the total turnover of the assessee was expected to be around Rs.5 Crores and the income of the assessee company would be expected to be around Rs.40.60 Lac for the assessment year in question. Subsequently, the assessee filed a return at a total income of Rs.18,86,660/-, on a turnover of Rs.9,01,78,242/-. The ld. AO took up scrutiny proceedings in the matter and held the books of accounts of the company to be unreliable due to the following reasons:-

- i. The books of accounts for the year had not been found during the survey proceedings and had not been produced before the concerned Id. AO after the survey proceedings. They had only been produced on 7.02.2018 and that too, without stock register.
- ii. The assessee company had not produced the indent and papers regarding materials issued to the assessee company by the electricity department.
- iii. In spite of 80% increase in turnover, there had not been any substantial increase in the income of the assessee company.
- iv. Major part of materials were seen to be purchased from sister concern, as opposed to the statement where they were stated to be supplied by the Government departments.
- v. The estimation of income made by Shri. Desh Raj Gupta, was done in the last fortnight of March, 2016, so the estimates could not differ as wildly as they had.

He, therefore, asked the assessee to produce certain details. He observed a contradiction between the total sales as disclosed by the company and the figures of total sales as received from the commercial taxes department. The Id. AO also noted that the assessee company had given different reasons for non-production of the books of accounts during the survey. Whereas Shri. Desh Raj Gupta had submitted that the books of accounts were in the possession of Shri. Amit Gupta in Fatehpur or Shri. Dilip Gupta, Advocate in Allahabad, it had changed its tone during assessment and stated that a search of Directorate General of the Central Excise Intelligence had been made on its premises on 13.01.2017, as a result of which, it was unable to produce the books during survey. From the same, the Id. AO concluded, that the assessee was attempting to mislead the Department right from the date of survey and since the books had not been produced before him, he held that they were

neither realistic nor complete nor correct and therefore, he rejected the books of the assessee under section 145(3) of the I.T. Act and estimated its profits at 7% of its declared turnover. Penalty proceedings under section 271(1)(c) were initiated.

3. Aggrieved with the said addition, the assessee went in appeal before the Id. CIT(A). Before the Id. CIT(A), it was submitted that during the course of assessment proceedings, voluminous details had been filed and books of accounts were produced for verification, but still the Id. AO by giving a general finding, had made a huge addition by applying net profit rate of 7% on estimate basis. Furthermore, for this estimation, no comparative case was cited by the Id. AO, when in previous years, in the assessee's own case, net rate of 2% to 3% had been accepted by the Department. The Id. AO had not considered the past history of the assessee's own case for earlier assessment years, which was the best guiding factor for determination of net rate. Hence, the addition was highly unjustified. The assessee cited the decision of the Hon'ble ITAT in the case of Balbir Singh Chauhan, where according to the assessee, identical issues were involved and the Hon'ble Bench, after considering the past history, had determined the net rate. Hence, it prayed that a similar view may be taken. It was submitted that there were good reasons for non-production of the books. Before the Id. CIT(A), it was submitted that the survey had taken place on 16.03.2016 and in the course of survey, books of certain years had been impounded by the Department and were lying with it, therefore, as a result of exceptional circumstances, the books could not be produced. It was submitted that the company was maintaining stock register hence, the proviso to section 145(3) was not applicable in the assessee's case. It was submitted that the Id. AO had given too much weightage to the statement recorded on the date of survey, which had no evidentiary value and based on that, no addition could be made against the assessee. The assessee also submitted a comparative chart showing its trading results for the past three years.

4. The Id. CIT(A) observed that it was the fact that during the year under consideration, the assessee's books of accounts were not found to be existing at the time of survey and were only produced before the Id. AO during the assessment proceedings. The accounts were not audited and the Id. AO found specific faults in them, which the assessee could not explain, especially with regard to the difference in the total business done with the sister concern M/s Jyoti Engineering Works, who had shown a total sale of Rs.4,06,57,186/- to the assessee, while the assessee had shown total purchases made from it at Rs.2,21,61,487/-. This showed that the action of the Id. AO in rejecting the books of accounts and estimating the income was proper. However, the Id. CIT(A) observed that the Id. AO had not mentioned any reasons for estimating the NP rate of 7% in the assessee's case. Looking at its past results, which had been accepted by the department under section 143(3) and the decision of Balbir Singh Chauhan, where identical issues were involved, the Id. CIT(A) felt that the rate of 5.04% adopted in that case was reasonable and accordingly he applied a net rate of 5.25% on total receipts.

5. The assessee is aggrieved at this estimation of income by the Id. CIT(A) and has come before us in appeal. Shri. Praveen Godbole, C.A. (hereinafter referred to as the 'Id. AR') submitted that during the course of survey, no incriminating material or loose paper was found, nor was there any charge of suppression of income, nor was any addition made on the basis of any survey material, but simply by finding fault, a huge addition had been made by adopting a net profit rate, without any basis. It was submitted that the books of accounts of the assessee were, in fact impounded by the Department on 16.02.2016 and for this reason, they could not be produced. During the assessment proceedings, it had produced voluminous details and also submitted books of accounts for examination, but still the Id. AO had applied a net rate of 7% without any comparative case being cited, when the assessee's own case had been considered by the Department in earlier years and net profit rate of 2% to 3% had

been accepted by the department. It was submitted that the assessee was basically a sub-contractor on behalf of the main contractor and in the sub-contractor business the margin of profit was low, which is an accepted fact and this fact was before the lower authorities but still the addition was made on presumption basis. It was submitted that in first appeal the Id. CIT(A) had accepted that the Id. AO had not mentioned any reasons for adoption of 7% NP rate, he had retained the addition at 5.52% by considering the case of Balbir Singh Chauhan, ignoring the fact that the rate in the case of Balbir Singh Chauhan was arrived at by studying the past history of that case. Therefore, there was no justification to fix a net rate on the basis of the past history of another assessee but if the same principle were to be applied, then the past history of the assessee's own case should be adopted. Ld. AR also brought to our notice the decision of the Tribunal in the case of M/s S.S. Associates vs. DCIT, Circle-1 in ITA No. 110/Alld/2019, wherein the Third Member had come to a view that the assessee's past history was the best guiding factor for determining the net rate and accordingly the net rate disclosed by the assessee was accepted. Accordingly, it was prayed that the addition sustained by the Id. CIT(A) may be vacated and the book results of the assessee may be accepted.

6. On the other hand, Shri. A.K. Singh, Sr. DR (hereinafter referred to as the 'Id. Sr. DR') pointed out that this was a survey case and the reasons for rejecting of the books of accounts had been stated by the Id. AO in his order. The stock register had never been produced before the Department for verification and unless the value of stock was submitted for verification, the rejection of the books of accounts was a must. It was submitted, that even if the Id. AO had adopted a higher estimate, the Id. CIT(A) had moderated the same after considering of comparative case and therefore, no interference was warranted in the orders of the Id. CIT(A).

7. We have duly considered the facts and circumstances of the case. We observe that at different points of time, the assessee had given different explanations for why the books of accounts were not available at the time of survey and then actually stated that they were available and were impounded and therefore, could not be produced during assessment. While the picture is hazy as to whether the books were produced or not, it is quite clear that the stock register was never produced before the Id. AO and therefore, it cannot be said that the books of accounts are complete and correct. In the circumstances, besides the other observations made by him with regard to discrepancy in purchases from sister concern and as noted by Commercial Tax Department, since the stock was not open for verification, we agree with the Id. AO that the books of accounts were not complete and correct and therefore, subject to rejection. However, we observe that neither Id. AO nor the Id. CIT(A) have considered the fact that the assessee was not a contractor but a sub-contractor and the margin for sub-contractors is usually lesser, because the contractor also retained some part of the contract value as their profit. In the circumstances, the rate of 5.25% appears to be too high for a sub-contractor. Further, it is not clear from the order of the Id. CIT(A) as to whether Balbir Singh Chauhan was also a sub-contractor or a contractor. Keeping in mind this fact, we feel it would be in the interest of justice, if, after considering the discrepancies pointed out in the books by the Id. AO and the Id. CIT(A), the net profit for the year is determined at 3.5% of contract value. We note that the statement given by the partner regarding turnover and profits, could at best, in the absence audited accounts, be a guesstimate and cannot be held as a ground to enhance the income of the assessee to that extent. We are therefore, of the view that an estimation of net profit of 3.5% is sufficient to cover the leakages on account of discrepancy in the books and yet be moored to the past history of the assessee's case. Accordingly, we

direct that net profit of 3.5% on total contract value, be adopted to compute the income of the assessee.

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

Orders pronounced on 27.12.2024 at Lucknow U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED: 27/12/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.