

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

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

ITA No.41/ALLD/2019
A.Y. 2014-15

Assistant Commissioner of Income Tax, Circle-3, Mirzapur	vs.	M/s N. Chaurasia Associates, Shaktinagar, Sonebhadra
PAN:AAJFM0374N		
(Appellant)		(Respondent)

And

ITA No.29/ALLD/2019
A.Y. 2014-15

M/s N. Chaurasia Associates, Khadia Bazar, Shaktinagar, Sonebhadra	vs.	Dy. Commissioner of Income Tax, Circle-III, Mirzapur
PAN:AAJFM0374N		
(Appellant)		(Respondent)

Assessee by:	Sh. Navin C. Agrawal, C.A. & Ms. Nita Goyal, C.A.
Revenue by:	Sh. Amalendu Nath Mishra, CIT DR
Date of hearing:	25.10.2024
Date of pronouncement:	31.12.2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

These two appeals for have both been filed against the order under section 250 passed by the Id. CIT(A), Allahabad on 10.01.2019. The grounds of appeal preferred by the Revenue in ITA No. 41/Alld/2019, are as under:-

"Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has not erred in allowing the relief of Rs. 6,51,65,031/- by accepting the assessee's statement that the receipts are from its business activity in civil construction without any verifiable

corroborative/documentary evidence to such statement and taxing the receipts under the head 'Profits and gains of Business' and allowing expenses against the receipt by estimating net profit @ 8% of receipts?"

Prayer :- It is, therefore, most humbly prayed that the order of the Ld. CIT (A) dated 10.01.2019 may kindly be set aside and that order dated 15.12.2016 of the Assessing Officer may kindly be restored."

2. The grounds of appeal filed by the assessee in ITA No. 29/Alld/2019 are as under:-

"1. Because the CIT (A) has erred in law and on facts in taking the turnover at Rs.12,54,42,478 instead of Rs. 5,46,10,926.

2. Because the turnover taken by the CIT(A) excessive.

3. Because the CIT(A) has erred in law and on facts in taking the Net Profit Rate of 8% as against the disclosed Net Profit @ 3.31% in the original return.

4. Because the order appealed against is contrary to Law, facts and principles of natural justice."

3. It is observed that the appeal of the assessee is late. In this context, a condonation petition has been filed by Shri. J.N. Chourasia, who is the working partner of the assessee, accompanied by an affidavit. It has been submitted that he received the order dated 10.09.2019 on 11.01.2019 and was ready to come to Allahabad from (Sonebhadra) for the filing of the appeal, but he fell ill in the first week of March and did not recover until 25.03.2019 and therefore, he could only come to Allahabad thereafter for filing the appeal. It was prayed that there being no intentional delay in this regard, the delay in filing the appeal may kindly be condoned. After considering the petition, the delay of 14 days in the filing of the appeal is condoned.

3.1 The assessee has also preferred an additional ground as under:-

“5. Because the ld. CIT(A) has erred in law and on facts in holding that the revised return is a valid return within the provisions of section 139(5) of the Income Tax Act, 1961. It was prayed that the ground of appeal is purely on a legal issue which requires adjudication as it goes to the root of the appeal. It was, therefore, prayed that the same may kindly be admitted otherwise, the assessee would suffer irreparable loss.”

4. After considering the same and the jurisprudence on the issue, the additional ground is admitted for adjudication. The facts of the case are, that in this case a return of income was filed on 27.09.2014, showing contract receipt of Rs.5,46,10,926.15/- and total income of Rs.18,67,570/-. The same was accompanied by an Audit report dated 5.09.2014, issued by auditors M/s Shashi Kant Gupta & Associates, Varanasi. On 7.01.2015, the return was processed under section 143(1) and total income was determined at Rs.18,07,570/-. On 18.02.2015, an income tax refund was issued. Thereafter, on 1.08.2015, the assessee filed a revised return electronically at the same returned income of Rs.18,07,570/-, but showing contract receipts of Rs.12,54,42,278.15/-. This case was subsequently picked up for scrutiny by way of issue of notice under section 143(2). The ld. AO observed, that as compared to assessment year 2012-13, the assessee had shown declining profit rates in the assessment years 2013-14 and 2014-15 and in the assessment year 2014-15, the net profit rate was only rupees 2.437%. The ld. AO observed, that as per Form 26AS, the total contract receipts were only Rs 5,46,10,926/- and the balance of Rs.7,08,31,552/- of contract receipts that were shown in the turnover of the assessee, was not reflected in the Form 26AS as no TDS had been deducted upon them. The ld. AO also observed, that there were no corresponding receipts relating to this balance amount, in the bank statements of the four accounts that were furnished before him. Noting that this was extremely abnormal, he asked the assessee to furnish the documentary evidences of contract receipts and also produce the books of accounts. Several opportunities were provided to the assessee

but either compliance was not made, or the assessee failed to furnish evidence which showed that the remaining amount of Rs.7,08,31,552/- were the contract receipts of the assessee. Accordingly, he show-caused the assessee as to why an adverse view may not be taken with regard to these receipts. Subsequently, the assessee filed some description of the receipts from different parties, but the ld. AO observed that they neither contained the details of PAN, father's name, complete address or the copies of accounts. Neither did they reflect the mode of receipt. He also observed that material and consumables details ,as claimed, had neither been enclosed nor any bill or voucher been produced. With regard to the payment of labour and wages of Rs.1,82,26,741/-, the ld. AO perused the register that was produced before him and found that it was a freshly written register, where the thumb impression of various persons matched with each other. He, therefore, observed that the details produced were neither genuine nor verifiable from the books of accounts and he asked the assessee to show cause in this regard. In response, the assessee submitted that the amount of Rs.7,08,31,552/- was attributable to receipts generated from construction of residential houses and the supply of material on cost-to-cost basis, to various Contractors working in the area. It was also submitted that the mere fact that this amount was not reflected in Form 26AS, could not be a justified reason to tax the above receipts as income from other sources. It was submitted, that if there were receipts then there were bound to be expenditure incurred by the assessee in earning the income, of which he should be given deduction and only the balance profit should be taxable. The assessee also enclosed certain photostat copies of few bills in support of his claim of expenditure of Rs.9,19,49,603/- in respect of materials and consumables and he also submitted, that labour wages amounting to Rs.1,82,26,741/- were paid as per the register, which was maintained at the site by the concerned Munshi. However, the ld. AO held

that the assessee had not shown any evidence of receipts of Rs.7,08,31,552/- He had neither stated the mode of the receipt, nor was it found to be reflected in its bank accounts. He had also failed to produce documentary evidence of bills raised against these receipts. From the same, he concluded that the assessee had failed to adduce any evidence that these were contractual receipts and accordingly, he added back the receipts of Rs.7,08,31,552/- to the returned income of the assessee as, 'income from other sources'. He also rejected the books of accounts of the assessee with regard to the verifiable contract receipts of Rs.5,46,10,926/- and estimated the profit on the same @ 8%. He accordingly made an addition of Rs.29,07,826/- on this account.

5. Aggrieved with these additions, the assessee went before the Id. CIT(A). Before the Id. CIT(A), the assessee changed its arguments and submitted that it was a civil contractor and its contractual receipt was only Rs.5,46,10,926/-, which was the amount that was reflecting in Form 26AS. It submitted that it had filed its return on 27.09.2014 along with an audited balance-sheet and a profit and loss account, showing these contractual receipts. This balance-sheet was also filed before the NTPC authorities in connection with a tender, which the assessee was bidding for. However, since the qualification criteria with regard to the said tender required a greater turnover, it filed a revised balance-sheet before the NTPC authorities with an exaggerated contractual receipt of Rs.7,08,31,552/-, thereby disclosing its contractual receipts at Rs.12,54,42,578/-. However, the income declared in the return continued to be shown as the returned income, in the said tendered documents. The assessee submitted that despite this, when the tender committee insisted for a copy of the income tax return filed before the Income Tax Department, to verify the gross receipt of Rs.12,54,42,478/-, in order to save the tender and prevent disqualification / forfeiture of its earnest money deposit -- on the advice of

its' Chartered Accountant, it filed a revised return, in which the gross receipt was shown at Rs.12,54,42,478/- ,but the returned income was left unchanged. The assessee submitted that the revised return was filed showing turnover of Rs.12,54,42,478.15/-, only to match with the balance-sheet filed before the NTPC, Vindhyachal and NTPC, Rihandnagar, otherwise the bank guarantee against the EMD would have been forfeited and assessee's participation in tender process, would have been banned for three years. It was submitted that the firm was not aware of the legal implications of the submissions made before the Id. AO to justify the gross receipt and it submitted before the Id. CIT(A), that no work of construction of any residential house or material supply was executed by the firm and it has also been orally communicated to the Id. AO, that this revised return had only been filed to match with the managed balance-sheet filed before the NTPC authorities. It was submitted that that the Id. AO had not brought any material on record to show that this exaggerated receipt was linked to any source and therefore, it submitted that the addition of Rs.7,08,31,552/- as income from other sources was not justified. As regards the rejection of the books of accounts and the estimation of net profit @ 8% by the Id. AO on the verifiable contract receipt of Rs.5,46,10,926/-, it was submitted that the N.P. rate before depreciation was not as poor as what was reflected by the Id. AO because of the higher turnover displayed by the assessee in its revised return and furthermore ,the assessee had quoted low rate of execution of contract to get greater business and therefore, there was a depression in the amount of net profit. No adverse inference should therefore, be taken on this account and the NP declared by the assessee should be accepted.

6. The Id. CIT(A) forwarded the comments of the assessee to the Id. AO for his comments. In response, the Id. AO submitted that the assessee had filed its original return on time and also filed its revised return within the time permitted to it under

section 139(5) of the Act and therefore, it was a valid return. With regard to the affidavit filed by Shri. Jagat Narayan Chaurasia, the Id. AO pointed out that the contents of the affidavit were not connected with the income tax proceedings under section 143(3) of the Act. The Id. CIT(A) upon submission of the assessee that the Id. AO had not controverted the contents of the affidavit, once again referred the matter back to the Id. AO. This time, the Id. AO furnished his comments with regard to a written submission furnished by the assessee, accompanied by a Letter Reference No.NTPC/Rihand/Vig/2015/3042 dated 24.07.2015 that was furnished before the Id. CIT(A) and before him. The Id. AO submitted that the said letter was a report of AGM (Vig) of NTPC, but it was a departmental issue and did not form part of the assessment order dated 15.12.2016, that had been passed by the Id. AO in the case of the assessee for the A.Y. 2014-15. With regard to the fact of verification of the genuineness of the balance-sheet for F.Ys. 2012-13 and 2013-14 by the NTPC authorities, through the Income Tax Offices at Allahabad and Mirzapur, the Id. AO simply replied that the said report did not outline the methodology adopted by the concerned agency to verify their query with the Income Tax Authorities. Moreover, since no request or correspondence of that agency was available in the assessment records, hence it had no bearing on the orders passed under section 143(3) dated 15.12.2016.

7. On consideration of this remand report, the Id. CIT(A) held that the return of income had been filed by the appellant under his own signature. The Id. AO had mentioned that no request or correspondence was available in the income tax record to show any enquiry being conducted by the NTPC and in any case, the enquiry being conducted by the NTPC, had no bearing on the order passed under section 143(3) of the Act. Thus, the attempt of the assessee to explain his receipts to be bogus that was submitted in order to avoid some enquiry going on by NTPC,

could not have any bearing on the assessment proceedings. With these comments, the Id. CIT(A) held that the receipt of Rs.12,54,42,478/-, as shown by the assessee in the revised return, is to be taken as receipt for the appellant for the assessment year in question. However, he held that the entire amount of Rs.7,08,32,552/-, could not be added in the hands of the assessee. If it were to be taken as turnover, then the normal profitability of the business has also to be taken into consideration. He, therefore, applied the turnover of 8%, that was adopted by the Id. AO for verifiable receipts, as the profit for the entire turnover and accordingly, determined the net income of the assessee at Rs.85,74,349/-, giving the assessee a relief of Rs.6,51,65,031/-. He also recorded his comments, that the Id. AO was free to take action against the assessee if he felt that the assessee had falsified its account.

8. Both the Department and the assessee are aggrieved at this order of the Id. CIT(A) and have come in appeal before us. While the Department is aggrieved at the relief allowed by accepting the assessee's statement that the receipt is from its business activity in civil construction, despite the fact that no verifiable corroborative evidence had been presented in support of this statement, the assessee aggrieved that the Id. CIT(A) has not accepted its submissions and proceeded to assess the net profit on the turnover of Rs.12,54,42,478/-, instead of the earlier disclosed figure of Rs.5,46,10,926/-. In considering the different arguments, we shall take up the assessee's appeal first, as the legal issue raised by the assessee as an additional ground, is fundamental to deciding the grounds of appeal before us.

9. Shri. N.C. Agrawal, C.A. (hereinafter referred as the 'Id. AR') drew our attention to the paper book filed by him which contained the affidavit of Shri. Jagat Narayan Chaurasia that was presented before the Id. CIT(A) and also the submission dated 19.06.2017, that was submitted by him before the Id. AO in remand

proceedings. Pointing to the same, it was submitted that the assessee had filed a revised return on 1.08.2015 on the advice of its C.A., as it had bid for a tender at NTPC, Vindhyachal and Rihandnagar and given a bank guarantee of Rs.13,33,000/- as EMD against the said tender. Subsequently, it had discovered that it did not fulfill the threshold for applying the said tender and was in risk of having its EMD forfeited and being debarred for future bids for a period of three years. Therefore, with the aid of Chartered Accountant, the assessee had prepared a false balance-sheet showing a turnover of Rs.12,54,42,478.15/- and filed the same before the NTPC. However, a complaint was made by a tender competitor, regarding discrepancy in the turnover of the second balance-sheet to that of the original balance-sheet and therefore, verification letters dated 31.03.2015 and reminder dated 15.04.2015, was issued to the assessee by the tender committee and the assessee was asked to furnish certified copies of the income tax return, to verify the documents. In order to prevent the bank guarantee against the EMD being forfeited and to avoid the ban on the firm, the assessee on the advice of its C.A., filed a revised return on 1.08.2015 on the basis of the 'managed balance-sheet', without knowing its repercussion. The case had been taken up for scrutiny on the basis of this revised return, but in fact no such receipts actually existed. It was further submitted that the tender committee of the NTPC had treated the assessee to be a defaulter for submitting a fake balance-sheet on the basis of a report of NTPC Vigilance, which was prepared after due verification from the IT Department and consequently, its EMD bank guarantee of Rs.13,33,000/- had been forfeited and en-cashed by the NTPC under the terms of the bid documents. Copy of the same had not furnished before the Id. AO, but it was placing these facts, in order to show that the income determined on the strength of the revised return, was not a true income of the assessee, but was only a turnover disclosed in order to prevent its disqualification

by the NTPC and/or its disqualification and forfeiture of bank guarantee. Ld. AR placed reliance on the judgment of the Allahabad High Court in *Asha Industries, Aligarh vs. Commissioner of Trade Tax, U.P., Lucknow (2008) 47 STR 63*, wherein the Hon'ble High Court had held, that where there was no supporting evidence from the Trade Tax Department, to show that manipulated excessive figures of sales, purchase and stock furnished by the dealer in order to avail higher cash credit limit and housing loan from the bank were correct, and where there was no evidence of any dealing by the dealer with any party outside of the books, the explanation of the dealer that it had filed a bogus set of figures before the bank was liable to be accepted and Trade Tax could not be levied on such disclosures. The Id. AR also submitted, that in view of the fact that the assessment of the original return of the assessee had already been completed under section 143(1) on 7.01.2015, as per the provisions of section 139(5), the return filed by the assessee was not a revised return because it was non-est and since this was so, the scrutiny assessment taken up in respect of this non-est return, was *void ab initio*. Accordingly, it was prayed that there being no valid return filed by the assessee, the assessment order and the appellate order passed with relation to this so called, 'revised return' be quashed / annulled and the demand vacated, by upholding the additional ground raised by the assessee.

10. On the contrary, the Id. CIT DR, Shri. Amalendu Nath Mishra, submitted that the order under section 143(1) was not assessment an order within the meaning of section 139(5) and since the original return filed by the assessee had been filed on time and also the revised return had been filed within the time limit permitted, there was no basis to accede to the assessee's request. He further pointed out, that it was the assessee who had disclosed these receipts before the Department in the revised return and therefore, it was for the assessee to submit documents in support

of his contention that it was a receipt and not income from some undisclosed source. The provisions of the Act were quite clear, that if the assessee failed to prove any credit into the books of accounts to the satisfaction of the Id. AO, the Id. AO was justified in treating those as undisclosed receipts and it was submitted, that in the absence of any evidence, the Id. CIT(A) was unjustified in accepting that the sum of Rs.7,08,32,552/- were receipts and not the undisclosed income of the assessee. He, therefore, prayed that the order of the Id. CIT(A) may kindly be overruled and the order of the Id. AO restored.

11. We have duly considered the facts and circumstances of the case. At the very outset, it is important to decide the additional ground preferred by the assessee, because it questions the very validity of the assessment done under section 143(3) and the order under section 250 passed by the Id. CIT(A). The chronology of the case is not in doubt. The original income tax return was filed on 27.09.2014 and the same was processed on 7.01.2015. The refund arising upon such processing was also issued to the assessee on 8.02.2015. The assessee filed its revised return on 1.08.2015 i.e. after the date of issue of intimation under section 143(1). The Id. Counsel has argued that in view of the specific provision laid down in section 139(5), that the revised return may only be filed up to the date of assessment, no revised return could have been filed by the assessee after 7.01.2015. Accordingly, it is its' prayer that the return filed by it on 1.08.2015 is non-est in the eyes of law and therefore, could not be taken up for assessment, much less become the subject of a valid assessment order. We are not in agreement with this argument of the assessee. The Hon'ble Calcutta High Court in its judgment in the case of Tata Metaliks vs. Commissioner of Income Tax, vide its order dated 22.09.2014 in ITA no 301 of 2005, was asked to adjudicate upon, "whether on a true and proper interpretation of the provisions of section 139 and 143 and other relevant

provisions of Income Tax Act, 1961, the Tribunal was justified in law, in holding that the issue of intimation under section 143(1) for the assessment year 1999-2000 on August, 08, 2000 amounted to a completion of assessment within the meaning of section 139(5), disabling the appellant from filing a revised return and that the revised return filed on March, 31, 2001 was belated and invalid?" Relying upon the judgment of the Hon'ble Supreme Court in CIT vs. Rajesh Jhaveri Stock Brokers (Pvt. Ltd.) 221 ITR 500 (SC) the Hon'ble Calcutta High Court held, "thus we find the provision for assessment to be made for the purpose of issuance of intimation under section 143(1) of the said Act reserving the authority of the ld. AO to resort to the provisions under sub section (2) thereof, cannot be said to be completion of assessment and, therefore, limit the time otherwise available to file revised return." The Hon'ble High Court further quoted from the judgment of the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (supra) wherein the Hon'ble Supreme Court had held as under: -

"It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise."

12. Thus, it is quite clear that the order under section 143(1) is not considered to be an assessment, within the meaning of section 139(5), that would prevent an

assessee from filing a revised return, after the return of income originally filed, being processed under section 143(1). It may not be out of place to mention that the provisions of section 143(1) had been revised w.e.f. 1.04.2008 and now the revised section 143(1) refers to the, 'processing' of the return and does not use the word assessment at all. Thus, it is quite clear that the processing of the return under section 143(1) is not the assessment as envisaged in section 139(5) and therefore, the plea of the assessee that its return is invalid and non-est and could not be the subject of a valid assessment order, much less a valid appeal order, is found to be without any basis and is accordingly rejected. The additional ground i.e. ground no. 5 is accordingly dismissed.

13. Be that as it may, it is fairly clear from the sequence of events as narrated above and from a perusal of the assessment order itself, that the ld. AO was not able to find out any evidence whatsoever of the assessee indulging in any transactions over and above the transactions that had been declared by it in its return of income dated 27.09.2014. The ld. AO has recorded that the assessee has neither shown these so called, 'receipts' in any of its bank accounts, nor has it described the mode of receipts. The assessee has also not submitted any details, that would enable the ld. AO to verify that it had actually indulged in construction of residential houses and supply of materials, that resulted an excess turnover of Rs.7,8,32,552/- without any corresponding change in its return of income. It is true in the first instance, the assessee did not point out the issue of its filing of a false return before the ld. AO, but subsequently during remand proceedings, it has furnished the details of the proceedings before the Vigilance authorities of NTPC, Vindhyachal and Rihandnagar that prompted it to file its return in the manner that it has. Thus, the assessee has effectively retracted upon the return that it has filed, and in such circumstances, it is for the ld. AO to prove that the retraction was unwarranted. This, the ld. AO has not

been able to prove. On the contrary, the assessee has brought sufficient material on record in the form of inquiry letters and reports of the NTPC, to demonstrate that the return that was filed by it may not represent its true state of affairs, but was a return filed to meet certain qualification criteria in the NTPC tender. We observe that the Id. AO has failed to take note of the observations made by the NTPC authorities, that the assessee was guilty of filing a fake balance-sheet before it, on the grounds that the same had no relevance to the proceedings under section 143(3). However, now that the assessee has confessed before the Id. CIT(A) and before us that it had, in fact, filed a false return for this specific purpose, it is our view that the Id. AO should consider the said report of the NTPC, Vigilance authorities and the findings of the tender committee of the NTPC, before proceeding to hold that the turnover reflected in the second balance-sheet that was filed before the income tax authorities along with the return dated 1.08.2015, represented the true receipts of the assessee or that the balance figure of Rs.7,08,32,552/- represented undisclosed income of the assessee. The Id. AO should also consider whether this enhanced turnover is in any way reflected in the hands of the assessee which would justify it being treated as the assessee's undisclosed income. In the facts of the case, we feel it is in the interest of justice that the matter be restored to the file of the Id. AO for a fresh assessment, after considering these aspects, so that the true income of the assessee may be determined and the Department may take appropriate action for the determination of the true income of the assessee and consequent action if it finds that the assessee has acted in violation of section 277 of the Act. As the matter has been restored back to the file of the Id. AO, the other grounds of appeal of the assessee are held to be allowed for statistical purposes. Similarly, as all issues are to be re-considered by the Id. AO, the Departmental appeal is also held to be allowed for statistical purposes.

14. In the result, while the appeal of the assessee is partly allowed the appeal of the Department is held to be allowed for statistical purposes.

Orders pronounced in open court on 31.12.2024 at Lucknow, U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED: 31/12/2024

Sh

Copy forwarded to:

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

By order
Sr. P.S.