

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 403/RPR/2024

(निर्धारण वर्ष Assessment Year: 2018-19)

N. N. Construction, 58, Ritz, Ganpati Vihar, Borsi, Durg- 491001, C.G.	V	Deputy Commissioner of Income Tax, s Circle-1(1), Bhilai, Income Tax Office, 32/32 Bunglows, Bhilai, Dist. Durg, C.G.
PAN: AAGFN1890B		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24.03.2025
घोषणा की तारीख/Date of Pronouncement	:	28.03.2025

आदेश / ORDER

Per Arun Khodpia, AM:

This appeal of the assessee is directed against the order of Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (in short "the Act"), dated 01.08.2024, for the Assessment Year 2018-19, which in turn arises from the order u/s 147 r.w.s. 144 r.w.s 144B of the Act, dated 28.03.2023 passed by Assessing Officer, Faceless Assessment Unit, Income Tax Department (in short "Ld. AO").

2. The grounds of appeal raised by the assessee are as under:

1. *That, on the facts, it is apparent that notice u/s 148 dt. 30/03/2022 has been issued by the Jurisdictional Assessing Officer (JAO), i.e. Sri Ratnesh Kumar Sharma, ACIT- Circle 1(1), Bhilai, and not under 'automated allocation system' and therefore, the impugned notice is invalid and bad in law being issued by the JAO as the same is not in accordance with section 151A of the Income Tax Act. Therefore, the assessment order passed u/s 147 r.w.s. 144 read with section 144B dt. 28/03/2023, pursuant to such invalid notice, is also invalid and bad in law and the order is liable to be quashed.*
2. *That, without prejudice to above, on the facts of the case and in law, the CIT(A) erred in confirming the estimation of profit from business by applying the net profit rate of 10 % of the contract receipts, at Rs.69,30,291.00 as made by the AO, without rejecting the books of accounts, without pointing out any specific defect therein, without showing as to how profits cannot be adduced from the books of account maintained and got audited by the appellant. That, there is no such mention in the body of assessment order and therefore, estimation made by the AO is without jurisdiction. It is prayed that the book results are to be accepted in place of assessed income.*
3. *That, on the facts of the case and in law, the AO erred in making the estimate arbitrarily and illogically in the best judgment assessment, without reference of any comparable cases or history of the appellant's case available on record.*
4. *That, without prejudice to above, on the facts and in law, the Id. CIT(A) erred in confirming the addition of Rs. 60,729.00 made by the AO separately which is interest received on deposits made as security for his business purposes only and has a direct nexus with the business activity of the appellant. This addition of Rs. 67,729.00 is liable to be deleted.*
5. *That, without prejudice to above, on the facts of the case and in law, the AO erred in not allowing deduction/ of depreciation of Rs. 36,37,469.00 separately after estimation of profit from the business in accordance with the CBDT Circular no. 29D (XIX-14) of 1965 cit. 31/08/1965, which is binding on him.*
6. *The assessee reserves the right to add, amend, alter or withdraw any ground/grounds of appeal at the time of hearing.*

3. At the time of hearing, the Ld. Counsel for the assessee submitted that the assessee is engaged in the business of civil construction dealing with

private contracts. The Ld. Counsel submitted that during the assessment, the A.O. observed that the assessee has neither filed his return of income u/s. 139(1) of the Act nor filed audit report u/s. 44AB of the Act. The total turnover in the relevant assessment year was Rs.6,93,02,918/-. Therefore, it is absolutely clear that as per Section 44AB of the Act, the assessee was supposed to file the audit report within the stipulated time period. Accordingly, the A.O. calculated the percentage of the gross profit on the total contract receipts @10% and added an amount of Rs.69,30,291/-. Also, the A.O made a separate addition of Rs.60,729/-. Accordingly, the A.O. made total addition of Rs.69,91,020/- with tax effect of Rs.20,54,202/-.

4. In such scenario, the Ld. Counsel has assailed the legal ground as well as grounds on merits. However, at the time of hearing the Ld. Counsel requested not to press Ground of appeal No.1 which is legal in nature and also no objection sought by the respondent, therefore, the Ground of appeal No.1 is dismissed as not pressed.

5. Ground of appeal No.5 deals with the granting of depreciation as per CBDT Circular on the gross profit percentage which is to be worked out after verification of financials of the assessee, thus, needs further examination and deliberation. Accordingly, the said ground is premature, therefore, at this stage, the same does not require any adjudication.

6. Regarding the contention on merits, the Ld. Counsel submitted that the assessee being Bonafide, accepted the fact that during the first-round audit report was not filed along with the return of income. However, during the course of reassessment in response to notice u/s. 148 of the Act, the assessee had filed audited accounts and computation of income. It is submitted by the Ld. Counsel that whatever queries raised by the A.O. that had been complied with by the assessee.

7. On appeal before the first appellate authority, the Ld. CIT(Appeals)/NFAC confirmed the entire addition @10% of the gross profit.

8. The Ld. Counsel while arguing merits regarding Ground of appeal No.2 referred to Page 6, Para 4.2 onwards of the assessment order, the same is culled out for the sake of clarity:

4.2 Point wise rebuttal of the reply of the assessee including analysis of any case law relied upon

During the course of assessment proceedings, the assessee firm has submitted copies of audited financial accounts dated 17.10.2018 duly audited by the auditor u/s 44AB of the Income tax Act, 1961 but the assessee has failed to file its audit report in the due time and also failed to furnish its ITR for the year under consideration i.e. for A.Y. 2018-19. From the above, it is clear that this is an afterthought of the assessee firm after the initiating of proceedings u/s 148 of the Act by the department. It is pertinent to mentioned here that assessee has also failed to file its ITR in response to notice u/s 148 of the Act. Keeping in view the above noted facts and circumstances of the case, the income of the

assessee is assessed after applying 10% of the total contractual receipts which comes to Rs.69,30,291/- (10% of 6,93,02,918).

Further, assessee has received interest to the tune of Rs.60,729/-. In absence of Income Tax Return, the same is also brought for taxation as income from other sources and added to the total income of the assessee.

In addition to the above, as per information from insight portal, assessee firm has made cash deposits amounting to Rs.15,27,500/- and also invested an amount of Rs.14,54,500/- in time deposits with various Banks. In respect of the said transactions, assessee firm submitted in its reply that the said deposits were made with different Banks for the purpose of payments of various Business Expenses. The cash withdrawn from the bank meet against work done, payment of business activities i.e. statutory liabilities like salary and wages from different sites locate-d at place where banking activities was very far from work place.

Further as per the reply of the assessee, time deposits of Rs.14,54,500/- was prepared by firm to meet for different tender obligation and It is regular business requirement to prepare the same for compliance of tender. Keeping in view the business of the assessee and the reply submitted in this regard is hereby accepted.

4.3 Conclusion Drawn

Hence, in view of the above discussion and facts and circumstances of the case as discussed in the foregoing paras, an amount of Rs.69,30,291/- being 10% of contractual receipts is treated as income of the assessee and added to the total income of the assessee and interest to the tune of Rs.60,729/- is also added to the total income of the assessee.

9. The Ld. CIT(Appeals) while deliberating on this issue had given his finding at Para 5.3 of the order, the relevant findings are extracted as under:

5.3 I have gone through the grounds of appeal, statement of facts, assessment order and the submissions of the appellant. The appellant has not explained the reasons for non-filing of the ROI voluntarily under sec. 139(1), though it had taxable income. The appellant has also not submitted the reasons for non-filing of ROI in response to notice u/s. 148. The AO has rightly observed that there is an escapement of income by way of non-filing of return of income. Section 147 of the Act lays down that the reopening the assessment can be done by the Assessing Officer (AO) if he has 'reason to believe' that the income has escaped assessment. Escapement of income chargeable to tax can be due to not filing of return of income by the appellant despite having taxable income. It is seen from the assessment order that the appellant had not responded to the notices issued u/s. 142(1) on various dates. On 31.1.2023 it had filed an adjournment, on 02.02.2023 part information has been filed. Again on 9.3.2023 again adjournment has been filed. The AO held that though the appellant had filed all the information called for vide show cause notice, the assessee firm has not submitted the audit report u/s. 44AB and ROI in time. Therefore, it is an afterthought and no reliability on the submissions of the appellant. In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. Hence, the addition is upheld and ground No. 3 of the appeal is dismissed.

10. Based on aforesaid facts and circumstances, Ld. AR submitted that there was an error in the finding of Ld. AO in estimating the profit of the assessee without any justification, similarly Ld. CIT(A) also summarily accepted the findings of the Ld. AO that the appellant had filed all the information during the reopening assessment stage, however, as the Audit Report u/s 44AB and Return of Income was not submitted by the assessee in time, such documents

are just an afterthought and not reliable, therefore, the addition was confirmed. It was the submission that the decision of Ld. CIT(A) has nothing to say about the estimation of profit, its justification and that how the books of accounts furnished by the assessee are suffering with any infirmity, on account of which the profit of the assessee requires to be estimated. In view of such facts and circumstances, it was the prayer by Ld. AR that the book results of the assessee are to be accepted in place of assessed income.

11. Per contra, Ld. Sr. DR representing the revenue submitted that the assessee squarely failed before both the revenue authorities to corroborate with evidence and to satisfy that the Audit Report u/s 44AB was not an antedated report and an afterthought to justify the huge cash deposits in bank account. The failure of assessee to clarify and explain the source of deposits itself is enough to make the addition, thus, Ld. AO had very reasonably estimated the profit of the assessee, which in absence of any further clarity by the assessee, Ld. CIT(A) had rightly confirmed. Ld. Sr. DR, therefore, vehemently supported the order of Ld. CIT(A) and requested to uphold the same.

12. We have considered the rival submissions, perused the material available on record and the contentions of the assessee towards the findings of revenue authorities. Admittedly, in present case, the assessee has received contractual receipts aggregating to Rs.6,93,02,918/-, had deposited cash in his

bank account for Rs. 15,27,500/-, there was an interest income of Rs.60,729/-.

The main allegation by the assessee against the orders of revenue authorities is that the Audit Report which was not furnished by the assessee, have been duly submitted in the reopening assessment proceedings u/s 147, wherein the profit of the assessee is estimated, treating the Audit Report u/s 44AB as an afterthought, whereas the assessee also failed to submit its ITR in response to notice u/s 148 of the Act. The findings of Ld. AO thereafter approved by the Ld. CIT(A), without considering the additional evidence submitted by the assessee in terms of Rule 46A of the Income Tax Rules, 1962.

13. After having been considered the aforesaid facts and circumstances, the action of Ld. CIT(A) in summarily accepting the findings of Ld. AO cannot be considered justified. The Ld. CIT(A) ought to have observed the provisions of Rule 46A while deciding the appeal the assessee, to conduct necessary inquiries and verifications regarding the material / evidence furnished by the assessee in support of its contention to show that the transactions in bank account are genuine and explained. Ld. CIT(A) has the powers coterminous with that of the Ld. AO which ought to have been exercised, further if required a remand report would have been called from the Ld. AO, as no such exercises are preferred by the Ld. CIT(A) before giving the findings that the Audit Report u/s 44AB is an afterthought, the decision of Ld. CIT(A) cannot be concurred with, we, therefore, set aside the same and restore the matter back to the file of Ld.

CIT(A) for necessary factual verifications and decide the matter afresh. In terms of aforesaid observations, the matter is remanded back to the file of Ld. CIT(A) for *denovo* adjudication within a period of 03 months from the date of receipt of this order.

14. Needless to say, reasonable opportunity of being heard shall be provided to the assessee in set aside appellate proceedings. The assessee is directed to cooperate and assist proactively in the set aside proceedings, failing which the Ld. CIT(A) would be at liberty to decide the case in accordance with the mandate of law.

15. In result, the appeal of the assessee is **partly allowed for statistical purposes.**

Order pronounced in the open court on 28/03/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 28/03/2025
Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- N. N. Construction, Borsi, Durg
2. प्रत्यर्थी / The Respondent- Dy. CIT, Circle-1(1), Bhilai
3. The Pr. CIT, Raipur (C.G.)

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur