

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G', NEW DELHI)**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

I.T.A. No.859/Del/2012
(Assessment Year 2008-09)

DCIT, Circle 8(1),
New Delhi

(Appellant)

Vs. Skyline Engineering Contract
(India) Pvt. Ltd.
Plot No.4, Ground Floor,
Kehar Singh Estate,
Said UL-Ajab, New Delhi.
GIR / PAN :AAACS8955P
(Respondent)

Appellant by : Shri Hemant Gupta, JCIT DR
Respondent by : Shri Atul Puri, Adv.

Date of hearing: 23.11.2015
Date of Pronouncement: 29.01.2016

ORDER

PER KULDIP SINGH, JM:

The appellant, DCIT, Circle 8(1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal sought to set aside the impugned order dated 25.11.2011 passed by Ld. CIT(A) XI, New Delhi qua the Assessment Year 2008-09 on the grounds inter alia that:

"1. Ld. CIT(A) erred in law and on the facts of the case in quashing the invoking of section 145 of the I. T. Act and allowing the appeal of the assessee with regard to section 44AD.

2. *Ld. CIT(A) erred in law and on the facts of the case in restricting the disallowance u/s 14A from Rs.1,22,956/- to Rs.73,850/-.*

3. *Ld. CIT(A) erred in law and on the facts of the case in quashing the rejection of bills of the suppliers.”*

2. Briefly stated, the facts of this case are: during the processing of return of income filed by the assessee for the Assessment Year 2008-09, the case was subjected to scrutiny and consequent upon the notices issued u/s 143(2) and 142(1) along with questionnaire, Shri Atul Puri, Authorized Representative for the assessee put in appearance, filed details, but has not produced books of accounts in original / complete set of computerized print out on the ground of being voluminous work. The assessee company later on produced the books of accounts in soft form on laptop but still neither the bank statements were produced nor any bills and vouchers produced in original. Thus, the assessee failed to discharge its onus to prove various expenses claimed by it. Photocopies of some of the bills of major expenses exceeding Rs.50,00,000/- filed by the assessee found to be not paid during the Assessment Year under consideration as the same were not bearing stamp nor do they bear cheque number and date and as such, Assessing Officer came to the conclusion that since such bills are for payment of more than Rs.20,000/- each, which might have been paid in cash, the same cannot be allowed.

3. The Assessing Officer has also rejected the sub-contractor's bills on the ground that the same do not appear to be genuine being not in original / typed but in kachha/rough form. The Assessing Officer has also rejected the books of accounts of the assessee though the assessee has

filed audited copy of accounts being not reliable and by invoking provisions contained u/s 44AD of the Act, estimated gross profit (G.P.) @ 8%. The Assessing Officer has also disallowed the dividend income of Rs.73,850/- on the ground that it does not make part of the total income and thereby assessed the net taxable income at Rs.14,52,17,838/-.

4. The assessee carried the matter before Ld. CIT(A) who has partly allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by filing the present appeal.

5. We have heard both the authorized representatives, perused the material placed on record in the light of facts and circumstances of the case and orders of authorities below.

6. Ld. D.R. challenging the impugned order, contended inter alia that disallowance u/s 14A of the Act of trading additions have been rightly made by the Assessing Officer by rejecting the books of accounts whereas Ld. CIT(A) has erred in overturning the assessment order; that the bills furnished by the assessee have been examined and found to be bogus by the Assessing Officer but Ld. CIT(A) has erred in quashing the invoking of section 145 of the I.T. Act, 1961 and restricting the disallowance from Rs.1,22,956/- to Rs.73,850/- u/s 14A.

7. However, on the other hand, Ld. A.R. repelled the arguments addressed by the Ld. D.R. by contending inter alia that the assessee has produced all the relevant bills vide letter dated 16.09.2010, which have been arbitrarily rejected by the Assessing Officer; that since the payment was made in advance so, cheque numbers were not mentioned in the bills;

that entire details of bills of sundry account has been mentioned in the P & L account; that kachha bills have been prepared at the site and original bill is lying at page 94 of the Paper Book.

8. Now, the first question arises for determination in this case is, '*as to whether Ld. CIT(A) has erred in law and facts in quashing the invoking of section 145 of the I.T. Act, 1961 by the Assessing Officer who has rejected the bills submitted under various heads i.e. Shuttering, cement, aluminium, brick, paint, steel, timber etc.*' despite the comprehensive facts elaborated by the Assessing Officer inter alia that there is no mention of payment mode; that the bills have not been stamped and there is no mention of mode of payment i.e. details of cheque, bank account and date has not been mentioned; that the amount of said bills have also not been tallied with the lists of sundry creditors but found to be not tallied; that the assessee has failed to prove that the expenses have actually been made on creation of products of the business of the assessee and the same were paid out of undisclosed sources of income; that rough/ kacha bills were not correlated with pacca bills and bank statement.

8.1 The Assessing Officer rejected the books of accounts of the assessee by discussing the plethora of judgement delivered by Hon'ble High Court and ITAT but the assessment order itself lacks reasoning for rejection of books of accounts except making following observations:

“Although the present assessee is engaged in civil construction and where assessee is allegedly maintaining books of account and where the assessee has filed audited copy of account, the books of accounts are still not reliable and the same are rejected and section

44AD of the I.T. Act, 1961 is invoked and gross profit is estimated at 8%.”

9. Now, advertent to the impugned order, Ld. CIT(A) has made the following observations on the rejection of books of accounts, relied upon by the Assessing Officer:

“In this case the AO has made allegations far in excess of the discrepancies noted. He has stated that the books of account were not reliable and many disturbances were noted in the expenses and such expenses have become disallowable. The AO states that these expenses represent the tip of the ice berg. The AO has only given instances of a few vouchers which had some defects. Beyond this the AO has not been able to establish that there were irregularities in the accounts which could lead to conclude that the books of accounts were unreliable and the correct profit could not be deducted thereupon.

It is seen from the record that the a/c on computer were produced before the A.O. as per the order it is stated that the complete print outs were not produced. The AO has stated that photocopies of some bills were produced and gave instances of some bills amounting to Rs.93,87,310/- where he has stated that the bills were not paid because it does not show stamp nor mention cheque no. and date. Before me the appellant submitted that the bills in question were the ones where advance payment had been made and invoices received late. That was the reason cheque nos. were not mentioned. The appellant produced the bills which were test checked from the accounts.

10. Furthermore, when Ld. CIT(A) himself has categorically observed that sufficient opportunity of being heard has not been given to the appellant before invoking the provisions contained u/s 145 of the Act, it is surprising as to how the Ld. CIT(A) has proceeded with restricting disallowance u/s 14A from Rs.1,22,956/- to Rs.73,850/-. The operative

part of the findings returned by Ld. CIT(A) is reproduced as under for ready reference:

“The most important fact is that sufficient opportunity has not been given to the appellant before invoking s.145. The appellant is the business for long and has been consistently filing its return of income on the basis of audited accounts. The appellant has been following the mercantile system of accounting on the basis of which profits and gains of its business have been deducted. The AO has not given sufficient reason to suggest that the accounts of the appellant were such that correct profits could not be deducted from the accounts.

The AO has not given an opportunity to the appellant before invoking section 145. This is an essential prerequisite of any proceeding that the AO cannot draw an adverse inference against the appellant without giving an opportunity and a fair and just chance to the appellant to give its submissions. Principles of natural justice should have been followed.

I therefore hold that the action of the AO to invoke 145(2) is not correct and is therefore quashed. The returned income of the appellant may be accepted. The profit as disclosed by the appellant in its account may be taken as correct.”

11. So, keeping in view of the cryptic findings returned by the Assessing Officer rejecting the books of accounts and finding returned by Ld. CIT(A) referred to above, we are of the considered view that the opportunity of being heard has not been granted to the assessee by the Assessing Officer before rejecting the books of accounts. Even otherwise, the bills submitted by the assessee during assessment proceedings have been declared as bogus without calling the parties who have issued the bills in question. Moreover, the Assessing Officer at the one hand has accepted the P & L account statement and on the other hand, he has rejected the books of accounts of the assessee.

12. So, we are of the considered view that Ld. CIT(A) has erred in quashing the action taken by the Assessing Officer to invoke provisions contained u/s 145(2) of the Act without taking into account the admitted fact that the Assessing Officer has not provided sufficient opportunity of being heard to the assessee rather rejected the books of accounts arbitrarily and declared the bills filed by the assessee as bogus unilaterally. So, the impugned order passed by Ld. CIT(A) is not sustainable in the eyes of law and without entering into the merits of the case, the file is ordered to be restored to the Assessing Officer to decide afresh after providing opportunity of being heard to the assessee.

13. Order pronounced in the open court on 29th Jan., 2016

Sd./-
(N. K. SAINI)
ACCOUNTANT MEMBER
Date: 29.01.2016

Sd./-
(KULDIP SINGH)
JUDICIAL MEMBER

Sp.

Copy forwarded to:-
The appellant
The respondent
The CIT
The CIT (A)-, New Delhi.
The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.
True copy.

By Order

(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr. PS/PS
2	Draft placed before author	19,28,28,29/1,		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			