

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I": NEW DELHI

BEFORE SHRI P.K.BANSAL, ACCOUNTANT MEMBER

ITA No.:- 1783/Del /2015
Assessment Year: 2011-12

ITO Ward-1, Sonapat	Vs.	Bajrang Construction Co. H.No. 41, Sec-15 Sonapat PAN AAHFB1947L
(Appellant)		(Respondent)

Department by :	Shri Deepak Garg, Sr. DR
Assessee by :	Shri Gautam Jain, FCA
Date of Hearing	12/07/2016
Date of pronouncement	12/07/2016

ORDER

This appeal has been filed by Revenue against the order of the Ld. CIT(A) dated 22.1.2015. The only issue involved in this appeal relates to deletion of the addition made by the AO by estimating the net profit @ 8% of the gross receipt.

2. I have heard the rival submissions and carefully considered the same. I noted that in this case the AO has invoked the provision of

section 145(3) and estimated the net profit @ 8% of the gross receipt. The assessee went in appeal before the Ld. CIT(A). Ld. CIT(A) did not give any finding on the rejection of the books of accounts whether the action of the AO was valid or invalid. Although the Ld. AR vehemently contended before me that from the observation being made in para 3 it can be concluded that the Ld. CIT(A) has not approved the action of the AO rejecting the books of accounts. In my opinion the Ld. CIT(A) has not given any finding disapproving the action of the AO for rejection of the books of accounts. The assessee has not filed any cross objection or appeal before me against the action of the Ld. CIT(A) nor disapproving the action of the AO invoking the provision of Section 145(3). In view of this fact the AO in my opinion is bound to determine the income of the assessee in the manner specified u/s 144 of the Income Tax Act. Section 144 in my view does not give the AO absolute power to estimate the income of the assessee at a figure at which he may deem fit. The income of the assessee has to be estimated on the basis of the material being collected by the AO. In this case I noted that the assessee has derived the net profit in the asstt. year 2008-09 @ .41% while in the impugned asstt. year @ .38%. The assessee's results in the earlier year in my view is the best comparative instance. I noted that the Ld. CIT(A) has deleted the whole of the addition made by the

AO. The action of the Ld. CIT(A) in my opinion is not in accordance with the law. Once the books of accounts stand rejected u/s 145(3) the income of the assessee is bound to be estimated. In view of this fact I am of the view that it will meet the end of the justice if the income of the assessee is estimated by applying the net profit @ .41%. I accordingly set aside the order of the Ld. CIT(A) and direct the AO to estimate the income of the assessee @ .41%.

4. In the result appeal filed by the revenue is partly allowed.

Order pronounced in the open court on 12/07/2016.

Sd/-
(P.K. BANSAL)
ACCOUNTANT MEMBER

Dated: 12/07/2016

'Veena'

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi