

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA  
BEFORE SHRI K. NARASIMHA CHARY, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.339/KoI/2014

(निर्धारण वर्ष / Assessment Year :2010-2011)

M/s. R.K.Mondal & Brothers, Village&Post-Kajoragram, District –Burdwan, Pin-713338	Vs.	ITO, Ward-1(1), City Centre Durgapur , Kolkata
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAHFR 6294 C</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Dipten Roy, Advocate  
राजस्व की ओर से /Revenue by : Shri Pinaki Mukharjee, JCIT  
सुनवाई की तारीख / **Date of Hearing** : **21/10/2016**  
घोषणा की तारीख/**Date of Pronouncement** **28/10/2016**

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee, pertaining to the assessment year 2010-2011, is directed against an order passed by Id. Commissioner of Income Tax (Appeals)-Durgapur, in Appeal No.125/CIT(A)/DGP/2012-13, dated 20.01.2014, which in turn arises out of an assessment order passed by the Assessing Officer (AO) Under Section.144/185 of the Income Tax Act 1961, (in short the 'Act'), dated 30.11.2012.

2. Brief facts of the case qua the assessee is that the assessee filed its return of income electronically on 13.10.2010 declaring total income of Rs.3,70,399/-. The case was selected for scrutiny u/s.143(3) of the Income Tax Act and the AO completed assessment after making the addition at Rs.30,71,400/- by applying the profit rate at @8% of gross

contract receipts of Rs.389,92,446/-, u/s.144 of the Income Tax Act. No deduction for remuneration paid to the partners and interest on capital to the partners are allowed in computing the taxable income.

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the addition made by the AO after giving marginal relief in the gross profit ratio. Ld. CIT(A) has reduced the gross profit ratio to 5.56% from 8%. Therefore, Id. CIT(A) observed the following :-

*“Besides, it is seen from the assessment order that, without rejecting books of accounts U/s.145(3) of the Act, the A.O. has resorted to Sec.144 of the Act. However, while estimating the profit @ 8%, the A.O. has picked up the gross contract receipts from the audited P/L account of Rs.3,83,92,446/-. However in overall facts and circumstances of the case it is seen that the estimation @ 8% in this best judgment assessment u/s.144 of the Act is bit arbitrary and capricious. From the details of the net profit ratio as per the audited balance sheets, it is seen that a net profit are of 3.30% and 5.56% for the A.Y.2009-10 and 2011-12 respectively. Whereas the net profit ratio is 3.46% for the A.Y 2010-11. Since the appellant is carrying out the same line of business over the years, the net profit ratio of 8% as adopted by the A.O. does not meet the parameters of justice as per the provisions of best judgment assessment u/s144 of the Act. Hence considering these factual matrix of the case and legal position, I am of the considered opinion that estimation of net profit @5.56% will meet both ends of justice. Accordingly, the net profit on the gross receipts of Rs.3,83,92,446/- @ 5.56% comes to Rs.21,34,620/-, and the A.O. is directed to adopt this net profit as against Rs.30,71,400/- as determined by him in the assessment order. Thus the balance amount of addition of Rs.9,36,780/- is hereby deleted.*

*8.The A.O. has further directed to allow the remuneration to partners amounting to Rs.7,60,000/- and interest on capital to the partners amounting to Rs.2,00,868 out of amount of Rs.21,34,620/-, after due verification from computation filed with the return of income for the A. Y. 2010-11. Accordingly these grounds are partly allowed.”*

4. Before the Id. CIT(A) the assessee in addition to the papers and evidences submitted before the AO, submitted the explanation that the gross profit ratio for the purpose of computation of taxable income should be lower than 5.56%. Aggrieved from the order of Id. CIT(A) the assessee is in further appeal before us and has taken the following grounds/additional grounds of appeal :-

*The Ld. Assessing officer in this case erred in estimating profit 8% on total transport receipt disclosed by the assessee in audited accounts U/S 44AB, i.e. Ld. Assessing officer accepted the net receipt disclosed without estimating same which appears to be not permissible as per law. Ld. Assessing officer did this without rejecting the Books of Accounts. Hence addition was arbitrary in nature to be deleted in full. In original assessment Ld. Assessing officer called for Books of Accounts. But seven days time was prayed which was not granted and followed the easiest ways of making assessment U/S 144/185 of Tax Act 1961.*

*The Books of Accounts were produced to the Ld. CIT(Appeals) and to the Ld. Assessing officer for remand report on several occasions, and being satisfied Ld. CIT (Appeals) direct to make the assessment U/S 143(3)/185 instead of U/S 144/185 originally made.*

*In this line of business profit is generally arrived at 2% to 3% of gross receipt as appear in appeal no-112/CIT(A)/DGP/2010-2011 dated 10-01-2012 in respect of this Firm for AY.-2008-2009.(Copy of which was produced to Ld. CIT(Appeals))*

*Now resjudicata is not applicable in case of income tax assessment i.e. an assessment year under the Income Tax Act is a self contained assessment period and decision in one assessment year does not originally operates as resjudicata in respect of the matter decided in any subsequent year for the assessing officer is not a court and he is not precluded from arriving at a conclusion in consistent with the conclusion in another year as decided in joint family of Udyan Chinubhai VIS CIT(1967)63 ITR416(sc).*

*Here is this case Ld CIT(Appeals) took the percentage of profit at 5.56% (disclosed In AY.-2011-2012) instead of 3.47% (disclosed). But the assessment year 2011-2012 where profit was disclosed at 5.56% were not derived income same type of business. In Assessment year 2011-2012 assessee derived income from transport contract business as well as Hyba hire charges income, which is no way be the similar type of business. Moreover Ld. CIT(Appeals) may consider percentage of business only for earlier*

*year. But here the Ld. CIT (Appeals) consider the percentage of profit disclosed by the assessee for latter year. Hence the entire addition kept after orders of Ld. CIT(Appeals) is bad - in -laws and made to be deleted in full.”*

Additional Grounds of appeal :-

*In this appeal 5.56% Profit of gross turnover disclosed as because Hyba Transport charges Income were included in addition to contract business for the assessment year 2011-2012(Copy of audited Profit & Loss account and balance sheet enclosed). But in assessment year 2010-2011 there are no Hyba Transport charges income even that profit was disclosed at 3.46% (Copy of audited Profit & Loss account and balance sheet enclosed). We disclosed profit 3.30% in previous year i.e. 2009-2010 which was accepted by the Ld. CIT (Appeals) Durgapur. Hence profit accepted at 5.56% apparently on higher side for the same line of business and needs to be interference in appeal. Hence the appellant prays before your good self kindly honour to accept the profit disclosed for the assessment year 2010-2011 in the lower side i.e. 3.46% which will be justifiable.*

*Hope your kind honour please accept the net profit at 3.46% and shall ever remain great full.*

5. Although in this appeal, the assessee has raised multiple grounds of appeal and he raised the additional ground of appeal also. **At the time of hearing the main ground of the assessee has been confined to gross profit ratio to estimate the income of the assessee.** The AO has computed the income of the assessee by applying the 8% ratio on the gross receipts. Ld.CIT(A) has reduced the same to 5.56% of gross receipts of the assessee. Now, the assessee is in further appeal before us and requested us to adopt the gross profit ratio at 3.46% of the gross receipts.

6. Ld. AR for the assessee has submitted that 5.56% profit of gross turnover disclosed by the assessee because of Hyba Transport charges income, were included in addition to contract business for the assessment year 2011-2012. Ld. AR submitted that the assessee has

produced copy of audited Profit & Loss account and balance sheet. In assessment year 2010-2011 there are no Hyba Transport charges income even then profit was disclosed at 3.46%. The assessee disclosed profit 3.30% in previous year i.e. 2009-2010 which was accepted by the Ld. CIT (Appeals). Hence profit accepted at 5.56% apparently on higher side for the same line of business and needs to be reduced. Ld. AR requested to accept the profit disclosed for the assessment year 2010-2011 in the lower side i.e. 3.46% which will be justifiable.

7. On the other hand, Id. DR for the revenue has submitted and strongly defended the order passed by Id. CIT(A). He has pointed out that in the profit and loss account the assessee has shown Hyba Transport charges and other charges. He also pointed that Id. CIT(A) has already given partly relief by reducing the gross profit ratio from 8% to 5.56%. The assessee has submitted the same explanation before the Id. CIT(A) and the Id. CIT(A) after considering the Hyba Transport charges and other explanation of the assessee has come to the conclusion and given the partly relief to the assessee by reducing the gross profit ratio from 8% to 5.56%.

8. Having heard the rival submissions, perused the material available on record, we are of the view that there is no merit in the submissions of the assessee. The assessee has made same submissions and explanations which he made before the Id. CIT(A) and the Id. CIT(A) after considering the evidences and explanation has reduced the gross profit

ratio from 8% to 5.56%. Without considering the Hyba Transport charges income, the GP ratio in this line of business and considering the turnover of the assessee is quite reasonable. Therefore, we do not find any infirmity in the order of the Id. CIT(A) and, hence, we do not find any reason to interfere in the order passed by Id. CIT(A). We accordingly confirm the order passed by Id. CIT(A).

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 28/10/2016.

**Sd/-**  
**(NARASIMHA CHARY)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कोलकाता /Kolkata; दिनांक Dated 28/10/2016**

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-M/s R.K.Mondal & Brothers
2. प्रत्यर्थी / The Respondent.-ITO Ward-1(1), Durgapur
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता