

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "CAMPT AT MEERUT" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI PRASHANT MAHARISHI

ITA No. 4522/Del/2014
Assessment Year: 2009-10

Virendra Prakash Sharma,
C/o. Mehra & Co., CA,
7-Rajeshwari Palace, near
Commissioner Residence,
Civil Lines, Meerut.
(PAN: AIEPS7077H)
(Appellant)

vs.

ITO,
Ward-2(4),
Meerut.

(Respondent)

Assessee by: Shri Chander Mehra, CA
Department by: Shri Sheodan Singh Bhddoria, Sr. DR

Date of hearing : 15 .12.2015
Date of pronouncement: 11:02.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned First Appellate Order whereby the Learned CIT(Appeals) has estimated the profit of the assessee by applying N.P. rate of 5% against 8% applied by the Assessing Officer on the turnover of Rs.2,07,75,740.

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below and material available on record.
3. We find that the Assessing Officer rejected the books of account under sec. 145(3) of the Income-tax Act, 1961 on the basis that 90% of

entries in the cash book and ledger are not supported by bills and vouchers. He was of the view that books were not maintained in a manner in which the correct profit of the assessee could be deduced. The Assessing Officer thereafter taking assistance from the provisions of sec. 44AD found it reasonable to apply N.P. rate of 8% on the total receipt to estimate the profit of the assessee which resulted at Rs.16,62,059 against Rs.5,95,807 shown by the assessee from the business. Besides the said income shown from business by the assessee, he had also shown interest income of Rs.1,93,012 from bank.

4. The assessee contended above action of the Assessing Officer before the Learned CIT(Appeals) with the submission that in its remand report, the ITO-2(4), Meerut had stated that a few bills of assessee were kacha. The assessee contended that the assessee is engaged in the business of erection and commissioning of telecommunication tower which are in remote area and at times materials are urgently needed which are purchased locally. Since shopkeepers in the remote area are not registered with the sales-tax authorities. They do not issue pakka bills. It was further contended that application of sec. 44AD cannot be applied in the case of assessee where turnover exceeds the statutory limit of Rs.60 lacs. Considering all these

submissions, the Learned CIT(Appeals) while holding that section 44AD cannot be applied in the case of assessee found it reasonable to estimate the profit by applying net profit rate of 5% on the declared turnover resulting in the profit at Rs.10,38,787. This action of the Learned CIT(Appeals) has been objected by the assessee in the present appeal and reiterated the submissions made before the authorities below.

5. Considering the above submission, we are of the view that the authorities below were required to give some basis for application of N.P. rate at 8% by the AO and 5% by the Learned CIT(A) for making a just assessment. Neither of the two has given any basis to hold that application of respective net profit rate by them was reasonable against the net profit rate shown by the assessee at 2.37%. We also want to express our view that a kacha bill issued under a particular circumstances like local factor, if contains full information on the basis of which genuineness of that bill can be verified, such bills cannot be out-rightly rejected. Since the authorities below have not shown any basis for application of the respective N.P. rate at 8% or 5% as reasonable by them to estimate the profit of the assessee, we hold that action of the authorities below is not sustainable. We thus while setting aside orders of the authorities below direct the Assessing Officer to

accept the net profit rate of 2.37% shown by the assessee. The ground is accordingly allowed.

6. In result, the appeal is allowed.

Order pronounced in the open court on 11.02.2016

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 11/02/2016
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR

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