(2018) 02 DEL CK 0258

In the Delhi High Court

Case No : Income Tax Appeal No. 314, 315, 316, 317 Of 2016

Principal Commissioner Of Income-Tax-21 APPELLANT

Vs

M/S Mehta Construction Co. RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Income Tax Act, 1961 — Section 44B, 131, 133(6), 145, 145(3), 260A

Citation : (2018) 02 DEL CK 0258

Hon'ble Judges : S. Ravindra Bhat, J;Vinod Goel, J

Bench : Division Bench

Advocate : Zoheb Hussain, Deepak Anand, Balbir Singh, Rubal Maini, Rajesh Mahna, Achin Mittal, Vikram Kakkar

Final Decision : Partly Allowed

Judgement

ITA No.,316/2016,314/2016,315/2016,317/2016

AY,2007-08,2008-09,2009-10,2010-11

AO Order,30.12.2009,31.12.2010,26.12.2011,30.03.2013

R a t e of Income

assessed by AO",5% instead of 0.88%,"3 . 5 % instead of

0.46%",5% instead of 0.89%,5% instead of 0.89%

Appeal No. before

CIT(A)",245/09-10,365/10-11,298/11-12,137/13-14

CIT(A) Order,"31.03.2010 Against

Assessee","17.04.2012 in favour

of Assessee","19.06.2012 in favour

of Assessee (except a

minor addition of

Rs.2.5 lakh)","07.12.2014 Against

Assessee

ITA No. before ITAT,3967/Del/2010,2561/del/2012,4366/Del/2012,474/Del/2015

ITAT Order,16.10.2015,16.10.2015,16.10.2015,16.10.2015

In view of the facts and circumstances of the case and judicial pronouncements relied upon by the appellant, the Assessing Officer was not",,,,

justified in rejecting the books of accounts, by applying section 145(3) of the IT Act and estimating Net Profit @ 3.5% of the Gross",,,,

Receipts. The addition made by the Assessing Officer to the tune of Rs.12991319/ - is therefore, deleted. Appeal on these grounds is",,,,

allowed.â??,,,,

6. This reasoning was adopted for another year i.e. AY 2009-10. However, in the other two Assessment Years, CIT(A) affirmed the reasoning of the",,,,

AO, inter alia, in the following terms:",,,,

â??12. The appellant has argued that the A.O. ""has failed to appreciate that the registers are required to be maintained as ""Must Rollâ? as",,,,

the requirement of Labour Law for the business and Assessing Authority has failed in appreciating the expenses incurred"" such like. The",,,,

expenditure are closely connected, and incidental to the work of the execution of contract without which the contracts cannot be completed.",,,,

The appellant has stated in his reply that 'sitewise details of labour charges details are filed'. No such, details were filed during appellate",,,,

proceedings. The appellant was therefore, asked to clarify this. He stated that this refers to these details having been filed before the A.O.",,,,

In the asstt. order, the AO. has observed that ""The assessee has not furnished site wise details of labour charges claimed in the profit & loss",,,,

account"". The above statement of the appellant is therefore, factually incorrect and sitewise details of labour charges details have not been",,,,

filed. In the asstt. order, the AO. has further stated that ""The entire claim of expenses is made in cash. All these payments are through self",,,,

made vouchers. The claim of such expenses lacks third, parties verification. The assessee has not furnished for verification the labour",,,,

musters to examine the genuineness of claims of such expenses. Considering the facts mentioned in the asstt. order, the appellant's",,,,

arguments are not acceptable and the AO. had no alternative but to estimate the net profit.,,,,

13. The explanation given for the low N.P. rate is too vague and general. The rate of net profit estimated by the AO already takes these,,,,

arguments into consideration. The estimate of income @5% of gross receipts of Rs.19,93,27,702/- is justified considering the line of",,,,

business and the facts of the case. As discussed above, the A.O. has computed net income, separately for exceptional items (compensation",,,,

on delayed payments) and non-exceptional items (other receipts). For exceptional items, the net income is the same as the gross receipts",,,,

because the appellant has admittedly not incurred any expenditure on earning this income. Regarding non-exceptional items, the AO. has",,,,

estimated net profit @ 5% of these receipts. In fact, in the same line of business, a higher rate of net profit has been upheld in the following",,,,

decisions:,,,,

1. Zora Singh v CIT (2008) 173 Taxman 76 (P&H),,,,

2. Bandi Co-op. Labour & Construction Society v CIT (2008) 300 ITR 102 (P&H),,,,

3. CIT v Bhawan & Park Nirman (2002) 258 ITR 676 (Raj),,,,

4. Arihant Builders Dev. & Inv. P Ltd. v ACIT (2007) 106 ITO 10 (Indore)(SB),,,,

5. Bhagyanagar Construction P Ltd. v ITO (1993) 46 ITO 236 (Hyd.],,,,

6. ITO v Garg Jain & Assoc. (2008) 73 Taxman 53 [Chd.] (Mag)â??,,,,

7. Goyal Construction Co. v. ACIT (2003) 127 Taxman 46 (Agra) Mag),,,,

8. Jaspal Singh & Co. v. ACIT (1996) 89 Taxman 203 (Del) (Mag),,,,

14. Considering the facts, and the observations of the A.G. in the asstt. order, it is clear that had the A.G. not separately treated the",,,,

exceptional and non exceptional items, and taken a flat N.P. rate on the entire receipts, he would have applied a higher N.P. rate. However,",,,,

he has separately estimated income for both the heads and the net profit rate applied is justified in this context.â??,,,,

7. The ITAT-whose orders are impugned before this court under Section 260 A, was of the opinion, firstly, that the Assessing Officer did not render",,,,

any specific finding as to how correct profits could not be deducted from the books of accounts maintained by the Assessee. Earlier, it was noticed",,,,

that the Assessee had maintained the books of accounts as required under Section 44 B of the Income Tax Act and that they were regularly audited.,,,,

The ITAT, thereafter, went on to hold that the mere absence of a Stock Register (which though made in considering claims for expenses etc.) was",,,,

inconclusive and that the Assessing Officer had to record a higher level of satisfaction, if he were to reject the books of accounts and impose GPA.",,,,

8. In so concluding, the ITAT relied upon the judgment of Commissioner of Income Tax v. B.N. Aggarwal and Others 259 ITR 754 (SC). As a",,,,

consequence, all the appeals of the Revenue were rejected and the appeals of the Assessee for the two Assessment Years were allowed. The",,,,

Revenue relies upon the findings of the Assessing Officer and highlights that besides the absence of Stock Register, the respondent-Assessee did not",,,,

produce any material evidence in the form of invoices, contracts with its various sub-contractors and suppliers, the proof of quantities involved, muster",,,,

rolls, vouchers etc. relating to supplies and all connected details which would have justified its claims.",,,,

9. Learned Senior counsel for the Assessee on the other hand contested the Revenueâ??s submissions and stated that ITATâ??s findings are,,,,

justified. It was submitted that mere absence of Stock Register per se could not have resulted in the rejection of books of accounts, which were",,,,

regularly maintained and had been the subject matter of previous assessments. It was contended, moreover, that the Assessing Officer had made",,,,

inquiries by issuing notices under Section 131 and also conducted survey inquiries under Section 133 (6) by which various suppliers/sub-contractors,,,,

were asked to appear in the proceedings. The Assessing Officerâ??s order is absolutely silent on the justification or otherwise of the materials given,,,,

by such third parties or the statements recorded by them. It was submitted that this established the genuineness of the expenses claimed by the,,,,

Assessee. It was also highlighted that the peculiar nature of the business activity i.e. road contracts executed required assessments through sub-,,,,

contractors in far flung areas and that a large number of suppliers, sub-contractors and labour contractors were therefore involved.",,,,

10. The lower Appellate Authorities, therefore took cognizance of these facts and held that the rejection of books of accounts were justified. In the",,,,

present case, it is quite evident that the Assessee had maintained the books of accounts. On that score, the ITAT is correct, however, the proceedings",,,,

before the Assessing Officer and his order would reveal that there are gaps with respect to the materials sought but omitted to be produced. These,,,,

related to various aspects of the respondent-Asseseeâ??s road contract construction activity such as: (i) specific contracts entered into with sub-,,,,

contractors/ labour contractors/suppliers; (ii) absence of any supporting primary materials such as invoices disclosing quantities purchased; (iii) the,,,,

muster rolls or any other such materials or documentary evidence (including payment made to ESI, PPF on account of sub-contractors-even if by the",,,,

contractors) to the workmen involved; (iv) any other proof of the quantities or materials utilized and their relative costs.,,,,

11. The court also notices that the Assessing Officerâ??s order undoubtedly reflects that queries were made from various sub-contractors, however,",,,,

as to what was stated by them or what material was produced by them has not been discussed at all.,,,,

12. In these circumstances, the court is of the considered view that the ITAT and the CIT(A) rather superficially examined the material and set aside",,,,

the findings of the Assessing Officer. At the same time, the Assessing Officerâ??s order also is incomplete. In the peculiar circumstances, the",,,,

matter is remitted to the CIT(A), who shall render fresh findings on the entire subject matter, after considering the materials produced. While, it is",,,,

open to the CIT(A) to seek a remand report, with respect to specific aspects, the entire matter shall not be remanded for re-adjudication to the",,,,

Assessing Officer.,,,,

13. The appeals are partly allowed in the above terms.,,,,

