

Dwarka Pershad Radhey Ramanlal, ... vs Dy.Commissioner Of Income Tax, ... on 9 June, 2021

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' B ' BENCH, HYDERABAD.

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.1438/Hyd/2019
(Assessment Year : 2016-17)

M/s. Dwarka Pershad Radhey Ramanlal, 5-2-103/104, R.P.Road, Secunderabad-500 003 PAQN AACFD 4470F Appellant	Vs.	Dy. Commissioner of Income Tax, Circle 10(1), Hyderabad. Respondent
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Appellant By : Shri C. Suresh.
Respondent By : Shri Rohit Majumdar, D.R.

Date of Hearing : 04.03.2021.
Date of Pronouncement : 09.06.2021.

O R D E R

Per Smt. P. Madhavi Devi, J.M. :

This is assessee's appeal for the Asst. Year 2016-17 filed against the order of Commissioner of Income Tax (Appeals)-6, Hyderabad dt.7.6.2019.

2. The facts of the case are that the assessee-firm, a civil construction contractor filed its Return of Income for the Assessment Year 2016-17 on 6.10.2016 admitting a total income of Rs.44,03,430. The case was selected for limited scrutiny under CASS to verify and examine the following issues :

- (i) Whether sales turnover / receipts have been correctly offered for tax ?
- (ii) Whether contract receipts/fees have been correctly offered for tax ?

Accordingly, notice u. 143(2) of the Income Tax Act, 1961 ('the Act') was issued to the assessee. During the assessment proceedings u/s. 143(3) of the Act, the Assessing Officer observed that the assessee has received contract receipts of Rs.8,03,01,580. In this regard, the financials of the assessee were called for u/s. 142(1) of the Act. In response to the notice, the assessee submitted his P & L Account and Balance Sheet of the relevant financial year. The Assessing Officer observed that the net income was declared by the assessee at Rs.42,73,140 which includes the income (i) by refund of VAT amounting to Rs.11,04,805, (ii) income by interest on FDR to Rs.19,16,927; and (iii) income

by interest on deposit amounting to Rs.3,383. After reducing the aforementioned indirect incomes, the net profit from construction activity worked out to Rs.12,38,025. Considering the turnover of Rs.8,03,01,580, net profit of Rs.12,38,025 was worked out to 1.54% of the turnover which was too low. The Assessing Officer, therefore called for books of accounts and found that most of the vouchers pertaining to labour charges and other expenses were self-made. Therefore, he held that there is no other option but to reject the assessee's books of account and to estimate the profit @ 8% of the turnover.

3. Aggrieved by the said decision, the assessee filed an appeal before the CIT(A) by stating that the assessment was taken up for complete scrutiny by the Assessing Officer without following the due procedure. The CIT(A) however, held that the Assessing Officer has acted within his jurisdiction and confirmed the assessment order but accepted the income by refund of VAT as business income and thereafter, restricted the estimation of profit @ 6% of the turnover.

4. Aggrieved, the assessee is in second appeal before the Tribunal by raising the following Grounds of appeal :

" 1. The ld. CIT(A)-6, Hyderabad, has erred in law in failing to note that the Assessing Officer has travelled beyond the parameters of a limited scrutiny and in gross violation of the relevant instructions issued by the CBDT, has passed the assessment order u/s. 143(3) of the IT Act without obtaining the approval of the Principal CIT. In the result the ld. CIT(A)-6, Hyderabad failed to note that the Assessing Officer passed by the ld. Assessing Officer is not as per law and is liable to be quashed.

2. The ld. CIT(A)-6, Hyderabad, failed to note that the mandate of the Assessing Officer under the limited scrutiny was the verification of, whether, the contract receipts / sales, turnover have been correctly offered for tax, and having found that the same have been correctly considered in the computation of income, resorting to estimation of income by rejecting the Books of Accounts represents an action which is not in accordance with underlying facts, and the principles of natural justice.

3. The ld. CIT(A)-6, Hyderabad, failed to note that the action of the Assessing Officer in rejecting the Books of Accounts on the ground that certain vouchers are self-made is entirely in violation of the law on the subject and ignores well reasoned judicial pronouncements in this regard. Further the ld. CIT(A)-6, Hyderabad, has chosen to ignore the judicial pronouncements brought to his notice during the appellant proceedings on the said issue.

4. The ld. CIT(A)-6, Hyderabad, failed to note that the Fixed Deposits with the Banks made by the appellant firm are purely for purposes of business and hence the interest earned thereon represents "Business Income."

5. The ld. CIT(A)-6, Hyderabad, erred in law and failed to note that the Books of Accounts of the appellant firm are subject to audit and all its earlier assessments for the last several years have

always been made on the basis of its audited Books of Accounts and there was never been an occasion for rejection of Books of Accounts and estimation of income, and hence he failed to note that the assessment order is in violation of the principles of natural justice.

6. For the reasons set out in Grounds 1 to 5 above, the appellant respectfully prays that the Honourable Income Tax Tribunal may be pleased to hold that the assessment order passed is invalid in law, and is to be quashed.

7. Any other ground or grounds that may be urged at the time of hearing."

5. The learned Counsel for the assessee submitted that this is a case of limited scrutiny, whereas the Assessing Officer has exceeded his jurisdiction by conducting complete scrutiny without obtaining approval of the Pr. CIT for conversion of the assessment into complete scrutiny assessment. He submitted that for this reason alone, the assessment has to be set aside and this appeal is to be allowed. In support of this contention, the learned Counsel for the assessee has placed reliance upon the following decisions:

i) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Hyderabad - "B" Bench in ITA No. 429/HYD/20 18 in the case of G. Chandramouli vs. ITO, Ward - 1, Khammam.

ii) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Delhi - "B"

Bench in ITA No. 6767/Del/2019 in the case of De v Milk Foods Pvt Ltd. Vs. Add. CIT, Special Range - 3, New Delhi

iii) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Guwahati, "E" Court" at Kolkata in ITA No. 395/Gau/2019 in the case of Shri Prabir Das, Karimganj vs. ITO, Ward-Karimganj

iv) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Pune - "B"

Bench in ITA No. 05/PUN/2016 in the case of Suresh Jugraj Mutha vs. Add. CIT , Range-3, Dhule.

v) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Delhi in New Delhi vs. ACIT, Circle-5(2), New Delhi.

vi) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Mumbai -

"G" Bench in ITA No. 3098/Mum/2019 in the case of M/s Su-Raj Diamond Dealers Pvt Ltd vs. Principal Commissioners of Income Tax, Mumbai

vii) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Delhi - "G"

Bench in IT A No. 3098/Mum/20 19 in the case of M/s Spooner Industries Pvt Ltd vs. ITO, Ward-3(5), Hapur.

viii) Copy of Judgement of the Hon'ble Income Tax Appellant Tribunal, Jaipur, "A" Bench in ITA No. 1419/JP/2019 in the case of Smt. Manju Kaushik vs. DCIT, Range -7, Jaipur.

6. As regards the merits of the issue, he submitted that the assessee's books of account were audited for the earlier A.Ys as well and the net profit offered by the assessee and accepted by the Assessing Officer for all these years was less than 4% and therefore, the income offered by the assessee should have accepted by the Assessing Officer. On the issue of Assessing Officer exceeding his jurisdiction by connecting the limited scrutiny to complete scrutiny without the approval of the Pr. CIT, the learned DR, submitted that the Assessing Officer has confined himself to the points for which the assessment was selected for limited scrutiny under CASS and the CIT (A) has properly appreciated the issue and has rightly held that the Assessing Officer has not exceeded his jurisdiction and that there was no conversion of limited scrutiny into complete scrutiny. On merits also, he placed reliance upon the orders of the CIT (A) who has reduced the profit percentage to 6% of the turnover.

7. Having regard to the rival contentions and the material placed on record, we find that the points for selection of the return of income of the assessee for limited scrutiny are:

(i) whether the sales turnover/receipts have been correctly offered or tax? And

(ii) whether the contract receipts/fees have been correctly offered for tax?.

8. For this purpose, the first point to be examined is whether the sales turnover declared by the assessee was correct or not. The Assessing Officer has verified and found from the I.T data that the assessee has received contract receipts of Rs.8,03,01,580/-. He, therefore, accepted it as correct. As regards the second point, the Assessing Officer had examined whether the correct contract receipts have been offered to tax. In this regard when the Assessing Officer verified the P&L A/c and Balance Sheet of the assessee he observed that the assessee has declared the net profit at Rs.42,73,140/- and that it included indirect income also such as interest income on FDR and interest on deposits and also refund of VAT. Since they did not form part of business receipts, he reduced them from the net profit declared by the assessee. The Assessing Officer, therefore, was right in considering the contract receipts and working out the net profit from business and whether the net profit offered by the assessee was correct and since the assessee has failed to produce the books of account, the Assessing Officer had no option but to estimate the income of the assessee at a percentage of the turnover. Therefore, as rightly held by the CIT (A), the Assessing Officer has restricted himself to the points of limited scrutiny and has not converted limited scrutiny into complete scrutiny as alleged by the assessee and therefore, there was no need for him to obtain the approval of the Pr. CIT before completing the assessment. Therefore, the case law relied upon by the learned Counsel for the assessee are not applicable to the case before us. Therefore, Ground of appeal Nos.1, 2 and 3 are rejected.

9. As regards Ground No.4, we find that the learned Counsel for the assessee submitted that the interest income was from the fixed deposits made with the Bank for the purposes of offering Bank Guarantees to the contractees i.e. various Govt. Departments from whom the assessee received the contracts and therefore, such interest income also should have been considered as business income while computing the net profit offered by the assessee.

10. The learned DR, however, supported the orders of the CIT (A) but held that there is no direct nexus between the interest from deposits and the actual business of the assessee i.e., undertaking construction contracts and hence cannot be considered as business income of the assessee.

11. Having regard to the rival contentions and the material on record, we find that the CIT (A) has held that the interest income from fixed deposits is incidental to the main business activities, but however, he further held that the same cannot be termed as trading receipts or income derived from the business of the assessee. The CIT (A) has placed reliance upon the decisions of the Hon'ble Supreme Court in the case of Liberty India vs. CIT (2009) 317 ITR 218 (S.C) and the ITAT Delhi Special Bench decision in the case of DCIT vs. Allied Constructions (2007) 291 ITR (AT) 16. To come to this conclusion, we find that in these decisions, the Hon'ble Courts have held that there has to be direct nexus between the interest income and the business of the assessee. In the case of Allied Construction (Supra), the Special Bench observed that where FD's made in the Bank were utilized to give bank guarantees or as a performance security, the interest income therefrom cannot be said to have any nexus with the business of the assessee. The learned Counsel for the assessee has not been able to rebut these findings of the CIT (A) with any evidence or decision to the contrary and therefore, the assessee's ground of appeal No.4 is also rejected.

12. As regards the estimation of net profit at 6% of the gross receipts by the CIT (A), the learned Counsel for the assessee has relied upon the percentage of net income to gross receipts in the earlier years to plead that the net profit for the relevant A.Y is 2.92% of the gross total turnover and it should be accepted.

13. The learned DR, however, supported the orders of the CIT (A).

14. Having gone through the material on record and also that the average net profit disclosed by the assessee and determined by the Assessing Officer in the earlier A.Y is in the range of 2.5% to 5.8%, we deem it fit and proper to restrict the net profit to 5% of the gross total turnover during the relevant A.Y. In the result, assessee's ground of appeal No.5 is treated as partly allowed.

15. In the result, assessee's appeal is partly allowed.

Order pronounced in the open court on 9th June, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dt.9th June, 2021.

pvv/sps

Copy to :

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2. DCIT,Circle 10(1), Hyderabad.
3. Pr. C I T-6, Hyderabad.
4. CIT(Appeals)-6, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.

By Order