आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स० / ITA No.2115/PUN/2014
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Sanjay Aabaji Jadhav,
Prop. of M/s. Rushabh Constructions,
Ritesh Apartment, D'souza Colony,
College Road, Nashik – 422005.

PAN : ADSPJ1719J.

.... अपीलार्थी / Appellant

बनाम v/s

Asst. Commissioner of Income Tax,
Central Circle – 1, Nashik.

.... प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi.
Revenue by : Mrs. Nirupama Kotru.

सुनवाई की तारीख / Date of Hearing : 20.12.2017		घोषणा की तारीख / Date of Pronouncement: 29.12.2017

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee u/s 253 of the Act is emanating out of the consolidated order of Commissioner of Income Tax (A) - I, Nashik dt. 25.09.2014 for the assessment years 2007-08 to 2011-12. However the assessee is only in appeal before us for A.Y. 2011-12.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is an individual and stated to be Proprietor of Rushab Constructions. Assessee electronically filed his return of income for A.Y. 2011-12 on 30.09.2011 declaring total income of Rs.12,30,760/-. A search and seizure action u/s 132 of the Act was conducted in Ashoka Group of cases on 20.04.2010. Simultaneously, a survey action u/s 133A of the Act was conducted on 20.04.2010 in the office premises of Rushab Constructions. Notice u/s 143(2) of the Act was issued on 12.09.2012 and served on the assessee. Notice u/s 142(1) of the Act was issued on 14.11.2012 was also served on the assessee. AO noted that despite various opportunities, assessee did not furnish the required details. He therefore held that he had no other option but to take recourse to the provisions u/s 144 of the Act and complete the assessment after considering the material on record. AO noticed that assessee had declared contract receipts of Rs.2,43,90,310/- and declared net profit of Rs.10,50,907/-. The assessee was asked to substantiate the business activity along with the evidence to support the financial statements with the details of parties from whom the contract receipts were received and also furnish the copy of ledger account of purchases of diesel and other expenses. AO noted that assessee did not furnish the required details despite various opportunities granted to him. AO on perusal of the Tax Audit Report noted that assessee had not provided the auditor the proper evidences so as to enable the auditor to do a proper audit. He therefore concluded that the books of accounts of assessee are not reliable and accordingly proceeded to reject the books of accounts u/s 145 of the Act. He thereafter treated 50% of the purchases to be inflated and disallowed expenses of Rs.48,52,644/-. With respect to the direct expenses, out of the total expenses of Rs.53,41,573/-, he considered 1/3rd of the expenses to have not been incurred for the purpose of business and accordingly treated Rs.37,55,650/- as bogus expenses. Similarly, for indirect expenses of Rs.57,16,218/-, he disallowed 1/3rd of the expenditure on the ground that the same was not incurred for the purpose of business and were bogus and made a disallowance of Rs.19,05,406/-. He also made a disallowance of sundry creditors at Rs.45,71,290/-. AO thereafter vide order dt.28.03.2013 passed u/s 144 r.w.s. 153B determined the total taxable income at Rs.2,31,67,914/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.25.09.2014 (in appeal No. Nsk/CIT(A)-I/83 to 87/2013-14) passed a consolidated order for A.Ys. 2007-08 to 2011-12 and for the impugned year granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us, and has raised the following grounds :

> *"1. On the facts and in law the ld. CIT(A) has erred in holding that the Proceedings u/s. 153C are valid.*
>
> *2. On the facts and in law the Id. CIT(A) has erred in not appreciating:*
>
> *(i) that the A.O. has issued copies of satisfaction notes to the appellant vide letter dated 20/9/2013 wherein there is no mention of any material seized on the basis of which the notices u/s. 153C were issued;*
>
> *(ii) that the satisfaction note dated 10/7/2012 furnished by the A.O. vide letter dated 20/9/2013 clearly shows that the A.O. has recorded*

satisfaction on the basis of post survey proceedings u/s.133A in the case of the appellant;

(iii) that the satisfaction note claimed to have been recorded by the A.O. in the case of the searched person furnished in the appellate proceedings in August, 2014 is different from the satisfaction note issued to the appellant on 20/9/2013, therefore the so called note is an after thought as there cannot be totally different satisfaction notes recorded by the same A.O. on the same date;

(iv) that the different satisfaction note claimed to have been recorded by the A.O. in August, 2014 is an after thought in view of happening of events mentioned in the statement of facts;

(v) that the cheque issued by the appellant as security in respect of EMD paid to Ashoka Buildcon Ltd, seized to belong to the appellant and the same belonged to Ashoka Buildcon Ltd;

(vi) that the A.O. has erred in recording incorrect satisfaction in so called different satisfaction note claimed on later date, that the said account payee cheque issued in the name of Ashoka Buildcon Ltd. is a kickback given by the appellant sub-contractor to Ashoka Buildcon Ltd;

(vii) that the CIT(A) has erred in justifying the proceedings u/s.153C by recording different satisfaction that Ashoka Buildcon Ltd. is engaged in the undisclosed business of money lending and the said security cheque is in respect of unrecorded loan given to the appellant in cash;

(viii) that for involving action u/s.153C the satisfaction is to be recorded by the A.O. and not by CIT(A);

(ix) that in enquiry made by CIT(A) u/s. 133(6), Ashoka Buildcon Ltd has confirmed the fact that the said cheque of Rs. 11 lacs was obtained from the appellant as security against the EMD paid by Ashoka Buildcon and hence the different satisfactions recorded by the A.O. and CIT(A) for justifying the action u/s. 153C are the wild and false imagination;

(x) that as the said account payee cheque did not represented any undisclosed income and as the A.O. has therefore not made any addition on the basis of the said cheque, the proceedings initiated u/s. 153C should have been dropped by the A.O.;

3. On the facts and in law the CIT(A) has erred in rejecting book results and not accepting income returned as per audited books and final statements of accounts.

4. On the facts and in law the CIT(A) has erred in estimating net profit of sub-contractors business at 10% and 12% of the business receipts.

5. On the facts and in law the CIT(A) has erred in not appreciating the facts:

> *(i) that the reasons stated by him for estimating the income of the appellant at 10% and 12% are factually incorrect and ignoring the submissions filed by the appellant with the CIT(A) and to the A.O. in remand proceedings;*
>
> *(ii) that the Ashok Building has kept its profit to the substantial extent and hence sub-contractor cannot earn profit @ 10% and 12% of the business receipt."*

3. Before us, at the outset, Ld.A.R. submitted that he does not wish to challenge the legality of the proceedings u/s 153C of the Act raised in ground No.1. With respect to other grounds raised by assessee, Ld.A.R. submitted that though the assessee has raised various grounds but the sole controversy is with respect to estimation of income.

4. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that the additions made in the present case are uncalled for. As an alternate, he submitted that the additions made by the AO and confirmed by Ld.CIT(A) are on higher side. He submitted that Ld.CIT(A) while upholding the additions of the expenditure of 10% of the turnover, has not granted the credit of the net profit declared by the assessee. He submitted that the assessee had declared the income from business and profession at Rs.13,32,868/-. He placed on record the copy of the return of income for AY. 2011-12 and the computation of the total income. He therefore submitted that assessee may be granted the credit of the amount declared by him and that if the assessee is granted the credit of net profit declared by assessee then the assessee would have no grievance left. The Ld.D.R. on the other hand supported the order of lower authorities.

5. We have heard the rival submissions and perused the material on record. In view of Ld.A.R's submissions, ground No.1 is dismissed as not pressed. As far as other grounds with respect to estimation of income is concerned, in the present case, it is an undisputed fact that the assessee did not produce the required details before AO and therefore the AO passed an order u/s 144 r.w.s. 153C of the Act whereby he made an estimation of income by disallowing the various expenses. When the matter was carried before Ld.CIT(A). Ld.CIT(A) after considering the submissions of the assessee was of the view that the net profit if estimated at 10% of the gross receipts would be fair in the present case and accordingly confirmed the addition of Rs.24,39,031/- for A.Y. 2011-12. As far as rejection of books of accounts of assessee are concerned, we find that AO and Ld.CIT(A) have held that despite various opportunities granted to assessee, no books were produced by assessee. Before us also, assessee has not placed any material to demonstrate that the AO had faulted in rejecting the books of accounts u/s 145(3) of the Act. Once the books of accounts are rejected, the next step is to estimate the income. We find that assessee had declared the net income of Rs.13,32,868/- from business and profession in the computation of total income, the copy of which is placed by assessee on record. Considering the totality of the facts and the submissions of Ld.A.R., we are of the view that there is force in the arguments of the assessee in seeking credit of the profits declared by him. We accordingly direct the AO to grant the credit of Rs.13,32,868/- being the income from

profession and business as declared by the assessee in his computation of total income. **Thus, the ground of the assessee is partly allowed.**

6. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced on 29th day of December, 2017.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 29th December, 2017.
Yamini

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Nashik.
4. CIT(Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.