

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR**

BEFORE SH.T.S. KAPOOR, ACCOUNTANT MEMBER AND
SH.N.K.CHOUDHRY, JUDICIAL MEMBER

I.T.A. No.167(Asr)/2016
Assessment Year:2010-11

Asst. CIT,
Circle-II, Amritsar.

(Appellant)

Vs. M/s. Jagson Construction
Limited,
Vill:-Bhadurgarath,
G.T. Road, Batala.

PAN:AABC-J2040D

(Respondent)

Cross Objection No.16(Asr)/2016
(Arising out of ITA No.167(Asr)/2016)
Assessment Year:2010-11

M/s. Jagson Construction Vs. Asst. CIT,
Limited, Circle-II, Amritsar.
Vill:-Bhadurgarath,
G.T. Road, Batala.

PAN:AABC-J2040D

(Cross Objector)

(Respondent)

Appellant by : Sh. Rahul Dhawan (Ld. DR)
Respondent by: Sh. Tarun Bansal (Ld.Adv.)

Date of hearing: 04.05.2017
Date of pronouncement:28.07.2017

ORDER

PER N. K. CHOUDHRY (JM):

The Revenue Department has preferred the instant appeal as well as the assessee has also preferred to file Cross Objections challenging the order dated 31.12.2015 passed in Appeal No.140/2013-14 by the CIT(A)-1, Amritsar.

2. The grounds of appeal taken by the Revenue Department and grounds of Cross Objections taken by the assessee are reproduced herein below.

"The following Grounds of appeal raised by the Revenue Department.

- a) *On the facts and circumstances of the case, the Ld. CIT(A) has erred in reducing the net profit rate to 5% as against applied at the rate of 12% by the AO.*
- b) *The Ld. CIT(A) has not appreciated that in similar cases, the Superior Courts have upheld the net profit rate at 10% and also at the rate of 12%. Reliance in this regard is placed on the judgment of Hon'ble Chandigarh Bench of ITAT in the case of Sh. Gurinder Pal Singh Vs. CIT in ITA No.818/CHD/2009 wherein similar facts came to be appreciated and net profit at the rate of 10% was upheld.*
- c) *The Ld. CIT(A) further erred in reducing net rate of 5% in view of the past history of the case without appreciating that every year is an independent assessment year and the factual matrix of the case invited application of net profit rate at the rate of 12% as applied by the AO.*

The following Grounds of Cross Objection raised by the assessee.

1. *That the Id. A.O has wrongly rejected the books of account and made a huge addition by assessing the income at Rs.1,40,09,319/- from Rs.64,97,264/- as shown by appellant.*
2. *That the Id. CIT(A) has wrongly estimated the Income by increasing the net profit rate to 5% without bringing any evidence / valid reasons, on record in support of increase.*
3. *That the Id. CIT(A) has wrongly treated the following incomes as Income from other sources, which are part of Business Income appearing in Schedule-8 of Profit & Loss A/c and also wrongly treated as Schedule-10 of Profit & Loss Account :-*

| | | | |
|-----|-----------------------|---|----------------------|
| (a) | Bank Interest | = | Rs.6,39,875/- |
| (b) | Hire Charges | = | Rs.2,62,835/- |
| (c) | Other Interest | = | Rs.92,671/- |
4. *That order of Ld. AO & Ld. CIT(A) is bad in law, as well as, on facts.*
5. *That appellant craves to add or amend any ground of appeal before the appeal is finally heard or disposed-off.*
6. *That the order may kindly be modified or another consequential relief be allowed."*

3. The brief facts of the case are as under:

That the assessee is a Public Limited Company engaged in the business of road construction mainly for the State Govt., Local Authorities and various Govt. Agencies/Boards. The assessee filed its return of income on 15th October, 2010 declaring an income of Rs.37,01,390/- and the case was later on selected for scrutiny u/s 143(3) of the Income Tax Act, 1961. The assessee and his AR was attended the assessment proceedings from time to time and produced all the books of accounts which were test checked by the Worthy Commissioner of Income Tax, Circle- II, Amritsar.

After going through the proceedings, the Assessing Officer has assessed the total income of the companies to the tune of Rs.1,40,09,319/- after making various additions for a total sum of Rs.1,03,07,930/- by making the following additions.

| | |
|---|-----------------------------|
| <i>An addition after taking 12% of Rs.10,80,54,684/- being Gross Contract Receipts.</i> | 92,65,173/- |
| <i>An Addition of other income as stated in profit and loss Account</i> | <u>10,42,757/-</u> |
| Total | <u>1,03,07,930/-</u> |

The Ld. Assessing Officer also rejected the books of accounts of the assessee u/s 145(3) of the Act, and further has made an addition of Rs.10,42,757/- on account of interest received under income from other sources.

4. Feeling aggrieved against the assessment order, the assessee preferred the first appeal before the Ld. CIT(A) and the Ld. CIT(A) while giving partly relief to the assessee reduced the profit rate from

12% to 5 %. However, the Revenue Department as well as the assessee challenging the said order on different footings.

5. In support of its case, the Ld. DR argued that the order passed by the Ld. CIT(A) is suffered from perversity, illegality and against the plausible reasons because if the books of accounts have been rejected then there was no occasion to reduce the gross profit rate @ 5% instead of 12% as determined by the Assessing Officer. The Id. CIT(A) has also failed to consider that in similar circumstances and in the similar cases, the Superior Courts have upheld the net profit rate @ 10% and also in some of the cases @ 12%.

Further the Ld. DR also placed his reliance on the judgment of Hon'ble Chandigarh Bench of ITAT in the case of Sh. Gurinder Pal Singh vs. CIT in ITA No.818/Chd/2009 wherein similar facts came to be appreciated and net profit at the rate of 10% was upheld.

6. On the other hand, the Id. AR emphasized that the Ld. CIT(A) while reducing the net profit rate considered the case decided by Punjab & Haryana High Court in the case of Tellilinks vs. CIT, Bathinda (2015)377 ITR 158 (P&H).

7. In the instant case, the main controversy as raised by the Revenue Department with regard to the determination of net profit rate to the tune of 5% instead of 12% as applied by the Assessing Officer. Let us to examine the concluding part of the CIT(A) order.

"I have gone through the grounds of appeal, the submission and the assessment order of the AO.

The assessee is engaged in the business of road construction mainly for the State Government, Local authorities and various Government agencies/Boards.

After going through the proceedings, the A.O. has assessed the total income of the company at Rs.1,40,09,319/- (1,29,66,562 + 10,42,757). The A.O. has arrived at the said figure by applying Net profit rate of 12% of the/ gross receipt of Rs.10,80,54,684/- and further income from other sources shown in the balance sheet as interest received amounting to Rs.10,42,757/-.

The assessee has declared Net income of Rs.37,01,390/- on gross receipt of Rs.10,84,54,684/- giving Net profit rate of 3.43% after charging all the expenses. The A.O. while framing the assessment rejected the books of accounts and made best assessment judgment by applying net profit rate of 12% on gross receipt (Instead of net receipts) and assessed the income at Rs.1,40,09,320/-. The ground of rejecting the books of account is the labour and wages and only the record and document concerned to labour.

Keeping in view the nature of business i.e. contract business, the first relevant question is of application of appropriate net rate of profit on net turnover to arrive at correct income of the assessee. The net turnover should be calculated as under:-

| | |
|--|-----------|
| Gross Receipt for the year under consideration | 108054684 |
| Less: Material supplied by the department | 4425905 |
| Net Receipt for the year under consideration | 103628779 |

The value of materials supplied by the Government Departments has to be excluded from the value of gross contract. In view of **the CBDT's Circular No.684 dated 10.06.1994** wherein it has been clarified that the "gross receipts are the amount received from the clients from the contract and will not include the value of material supplied by the clients.

The Hon'ble Supreme Court of India in the case of Brij Bhushan Lai Parduman Kumar reported in 115 ITR 524, has held the real value of entire contract would be the value minus the cost of material so supplied.

The Learned AO has rejected the books of accounts of Assessee Company for the following reasons:

- i) The muster rolls did not contain the addresses and father's name of the person to whom the labour was paid. The details mentioned in the diaries/note books by the mates for the cash purchase for the material and record.

- ii) Books of accounts along with the supporting record are not complete and are not verifiable. It is not clear as to how the small and petty laborers not paid even after completion of one year from the date of project and the assessee has not been able to explain the same satisfactorily and conclusively.
- iii) The books maintained by the assessee do not support the labour expenses claimed and are not well substantiated by vouchers and can't be relied upon. No identification of labour could be made. Hence, the AO is not satisfied about the correctness and completeness of the books of accounts.

In the assessment order u/s 143(3) passed by the learned AO, from beginning to end only the issue of labour charges being excessive has been narrated.


The AO's contention that the labour payment was outstanding to a substantial extent at the end of the year was found incorrect, which formed the edifice for concluding the excessiveness of such payment. The reasons for such outstanding, the financial stress of the company, the fact of the existence or non existence of strike and the labour being shareholders of the company were all ignored and were never verified either through issue of summons or through filed enquires by the AO. The brushing aside of the affidavit duly filed by the assessee without verification of facts enunciated through sworn statement is impermissible.

The AO also ignored the fact of percentage of total labour payment to contract receipts in the relevant period as compared to preceding previous years, as the same was lower in the relevant period. The AO further misinterpreted the observations of the auditor in respect of fixed assets to incorrectly align the same with labour payment. The AO failed to point out the excess of labour charges being in existence in other months as compared to the incorrect adopted by her for comparison.

Further it is trite law that the past accepted history of the assessee's own case cannot be lost sight of by revenue and must be considered while making any assessment. This is an established law that once the books are rejected, the past history of the case becomes the most relevant criterion for estimating the income, especially in absence of any discrepancy in books of accounts or in the method of accounting employed.

I have also considered the other submissions of learned counsel for the appellant and gone through the material placed before me as well as the judicial rulings relied on by the AO. As regards rejection of books of accounts, it is abundantly clear that AO noticed several defects in the books of accounts as mentioned in para 4 above and need not be repeated again. It is also an admitted fact that the assessee did not furnish the details of site wise purchases and consumption of raw material and stocks. In view of these discrepancies and failure of appellant to furnish the details, the AO came to the conclusion that the books of accounts of the assessee did not reflect true profits. It is also seen that the

appellant has declared much lower profit as compared to the other cases in the similar line of business. The AO, in addition to the other defects, has mainly relied on the failure of the appellant to submit the site wise purchase, consumption of material and closing stock details, which the appellant has admittedly failed to furnish. The Hon'ble Allahabad High Court in the case of Bimal Kumar Anant Kumar (288 ITR 278) has held that where the profit was much lower than in other similar business and assessee does not maintain stock Register, rejection of accounts and the estimate of income cannot be avoided. The judicial rulings relied on by the appellant are distinguished from the facts of the case of appellant. Hence, the AO was fully justified in rejecting the books of accounts under section 145(3) of the Act in view of the decision of Hon'ble Allahabad High Court in the case of Bimal Kumar Anant Kumar (288 ITR 278). Therefore, the action of AO with regard to rejection of books of accounts under section 145(3) of the Act is upheld. The ground taken up by the appellant in this regard is dismissed.



Keeping in view the CBDT's Circular No. 685 and respectfully following the judgment of Hon'ble Apex Court (supra), the orders of my predecessor CIT (A) and the past history of the assessee's case the net profit at the rate of 5% is required to be applied on the value of contracts after reducing the value of material supplied by the Govt. Departments from the gross contract receipts i.e. at Rs.10,36,28,779/-(Rs.10,80,54,684/- minus Rs.44,25,905/-), which works out to Rs.51,81,438/-. The appellant, therefore, gets a relief of Rs.77,85,124/- Hence the addition to the extent of Rs.51,81,438/- is confirmed. This ground of appeal is partly allowed.

The appellant has taken up ground No.4 regarding inclusion of income from other sources of Rs.10,42,757/-. A perusal of income from other sources in schedule 10 of the P&L account reveals that this income consists of interest on FDRs, interest in Income Tax refund and rebate etc. These incomes cannot be said to have arise from the contract business in respect of which the books of account were rejected. These incomes consist of independent source and are liable to be considered separately for taxation. Hence, the ground of appeal in this regard is dismissed and addition made by the AO is confirmed."

In the instant case, the Ld. CIT(A) estimated the net profit @ 5% after reducing the cost of material supplied by the Govt. Departments from the gross receipts as it reflects from the record that no addition in the net profit rate was made by the Department either in the preceding or succeeding years and G.P & N.P ratio for the last three years as it reflects from the record are as under:

| S. No. | A.Y. | Turnover (cr) | GP Ratio | NP Ratio before Depreciation | Profit (Rs.) |
|--------|-------|------------------|-------------|---------------------------------|-----------------|
| 1. | 08-09 | 16.93 | 13.59 | 5.54 | |
| 2. | 09-10 | 28.16 | 12.59 | 5.00 | |
| 3. | 10-11 | 10.80 | 13.93 | 5.5 | 59,47,421 |

It is a fact that in the instant case, the books of accounts are rejected therefore, the past history of the case also became relevant for the consideration of the estimation of N.P. rate. The assessee relied upon the many judgments but we feel it appropriate to consider the judgments of the Jurisdictional High Court passed in the case of *Telilinks vs. CIT, Bathinda* (2015)377 ITR 158 (P&H).

In the said judgment the main controversy with regard to the determination of Net Profit and while considering the nature of issue, the Hon'ble Court observed as under:

The first question relates to the nature of power exercised while determining a net profit rate. The question must necessarily be answered by holding that where the books of account are rejected or not produced, the Assessing Officer would be well within the limits of his jurisdiction to assessee income by applying a fictional net profit rate. The power so conferred is quasi-judicial and, therefore, not unbridled as it must be guided by reason and though it may involve a degree of guess work, must be based upon a rational analysis of facts. The first question of law is answered accordingly.

The second question of law, namely, factors required to be taken into consideration while applying a net profit rate has come up for consideration, as on the same set of facts the Assessing Officer, the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal have applied different rates of net profit. The discretion to determine an adequate net profit rate undoubtedly vests with the authorities under the Act but the discretion so vested is neither unbridled nor unguided as it must be guided by reason, i.e., should be preceded by reasons which, in turn, should be preceded by a perceptible process of reasoning based upon due consideration of all relevant facts. However, the authorities under the Act appear to construe their jurisdiction as a discretion to apply a thumb rule dependent almost entirely upon the whims of a particular officer.

The discretion to determine a net profit rate must necessarily be exercised on the basis of relevant factors which we shall enumerate but before doing so, would clarify that these factors are neither exhaustive nor a final word on relevant factors that may be considered while determining the net profit rate. A few significant factors are the past tax history of the assessee, if available, assessment orders that may have been passed and accepted by the Department, the nature of the assessee's business, an appraisal of the value of the contract,

prevailing economic conditions vis-a-vis the assessee's business, the price of raw material, labour etc. the rise in price index as notified by the Central Govt. from time to time if applicable and if the Assessing Officer proceeds to rely upon assessments of other assessees engaged in similar business to do so only after determining points of similarity, etc. At this stage, it would be appropriate to clarify that the word "similar" is not synonymous with the word "identical". Factors referred to above are merely illustrative and not exhaustive of the circumstances that may or may not be taken into consideration.

While respectfully relying upon the said judgment as the previous history of the assessee shows almost similar result because in Assessment Year:2008-09, the net profit rate was considered as 5.54 and in Assessment Year: 2009-10 it was considered 5.00 and in the relevant year i.e., 2010-11 it is considered 5.5 and the authority supposed to determine the net profit rate by considering the aforesaid facts as enumerated in the said case. The Ld. CIT(A) have gone into minute details of the case and then only came to the conclusion by reducing the net profit rate from 12% to 5% which according to our considered view is well reasoned and based on the past history and justified, therefore, does not require any interference of this

forum. Hence, we confirmed the addition @ 5% as determined by the CIT(A).

Now, coming to the Cross Objection raised by the assessee, more or less the assessee also challenged the net profit rate and has not emphasized specifically on other grounds. Hence, in view of the observations made above in appeal No.167(Asr)/2016, the C.O. filed by the assessee stands dismissed.

8. In the result, the appeal filed by the Revenue Department in ITA No.167(Asr)/2016 as well as Cross Objection No.16(Asr)/2016 filed by assessee are dismissed.

Order pronounced in the open Court on 28.07.2017.

Sd/-
(T. S. KAPOOR)
Accountant Member

Sd/-
(N.K.CHOUDHRY)
Judicial Member

Dated:28.07.2017.

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Assessee: *[Signature]*
(2) The
(3) The CIT(A)
(4) The CIT, Asr.
(5) The SR DR, I.T.A.T.,

True copy

By Order

[Signature]

वरिष्ठ निजी सचिव
Sr. Private Secretary
आयकर अपीलीय अधिकरण
Income-Tax Appellate Tribunal
अमृतसर
Amritsar