

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A Nos.1979&1980/Kol/2018

(निर्धारण वर्ष / Assessment Years: 2012-13 & 2013-14)

Rajesh Agarwal C/o Sri S.L. Kochar, Advocate, 5, Ashutosh Chowdhury Avenue, Kol-19.	Vs.	ITO, Ward-36(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADHPA3042Q		
(Appellant)	..	(Respondent)

Appellant by : Shri Anil Kochar, Advocate

Respondent by : Shri Dhrubajyoti Roy, JCIT

सुनवाईकीतारीख/ Date of Hearing : 30/09/2020

घोषणाकीतारीख/Date of Pronouncement : 14/10/2020

आदेश / O R D E R

Per Shri S. S. Godara:

These two assessee's appeals for assessment years 2012-13 & 2013-14 arise against the Commissioner of Income Tax (A) - 10, Kolkata's separate orders both dated 30.07.2018 passed in Case No.43/CIT(A)-10/Wd-36(1)/12-13/16-17/Kol & 44/CIT(A)-10/Wd-36(1)/13-14/16-17/Kol involving proceedings u/s 143(3)/147 & 143(3) of the Income Tax Act, 1961 respectively; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's first and foremost identical grievance is that both the lower authorities have erred in law and on facts in applying profit rate of 8% on the civil construction business receipts resulting in addition of Rs.84,53,313/- and Rs.25,56,747/-; assessment year wise, respectively. Mr. Kochar invited our attention to the assessment order(s) as well as the CIT(A)'s detailed discussion(s) to this effect estimating the assessee's profit rate declared @1.44 & 1.18%

assessment year wise to that a flat rate of 8% in issue. Learned counsel is fair enough in admitting that the assessee had not maintained regular books of accounts since he placed on record the alleged reconstructed accounts resulting in the contractual receipts increased from Rs.3412744/- to Rs.94689239/- in former and that of Rs.37973145/- remaining unchanged in the latter assessment year; respectively. It is sought to be highlighted that Assessing Officer's assessment orders nowhere found any fault with the assessee's reconstructed books of accounts allegedly showing the impugned lower profit rates as well.

3. Learned counsel next took us to the assessee's civil construction turnover(s) pertaining to the impugned two assessment years showing a phenomenal increase as compared to that from assessment year 2007-08 to 2011-12 and (more particularly Rs.38885776 to 94689239/- hereinabove) therefore, the necessary presumption that flows in such an instance is that a corresponding increase in routine sequence expenses is very well justified. He accordingly urged us to delete the additions in both the assessment years.

4. Learned departmental representative has drawn strong support from both the lower authorities' action. We are taken to the CIT(A)'s findings in page 10 having followed this tribunal's coordinate bench's order(s) dated 04.10.2017 in earlier assessment years (supra) adopting 8% as the profit rate on civil construction business turnover itself.

5. We notice in this factual backdrop that the instant former issue of correctness of both the lower authorities' action estimating the assessee's profit rate @8% in absence of the regular books of accounts is no more res integra since this tribunal's coordinate bench's decision pertaining to assessment year 2007-08 to 2010-11 has already assessed identical contractual receipts at the very rate only. We wish to reiterate here that the assessee had also not maintained regular books as well which could be subjected during the course of assessment. There is no distinction coming from the assessee's side qua all these clinching aspects. We

thus adopt judicial consistency in the given facts and circumstances to decline the assessee's identical former substantive ground. The assessee's latter appeal ITA No.1980/Kol/2018 raising this sole issue fails therefore.

6. We revert back to the assessee's former appeal ITA No.1979/Kol/2018 raising the latter issue of short-term capital gains addition amounting to Rs.2,17,61,675/- after invoking section 50C of the Act. Mr. Kochar's only plea is that neither any of the lower authorities had made section 50C(2) statutory reference to the DVO which has been held as a mandatory pre-condition as per hon'ble jurisdictional high court's decision in Sunil Kumar Agarwal vs. CIT (2016) 372 ITR 83 (Cal). We find no merit in assessee's instant technical remand plea as it has been made clear in the CIT(A)'s discussion in para 2 page 22 that this latter issue is also no more res integra since both the lower authorities have followed the tribunal's order dated 13.04.2018 in ITA Nos.10 & 27/Kol/2016 for the assessment year 2011-12 in preceding assessment year(s) regarding the very capital asset i.e situated at 16F, East Topsia Road, Kolkata-700046. We thus adopt judicial consistency herein as well to decline the assessee's instant latter substantive ground. Its former appeal ITA No.1979/Kol/2018 is also rejected.

7. These two assessee's appeals are dismissed.

Order is pronounced in the open court on 14.10.2020.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 14/10/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- Rajesh Agarwal
2. The Respondent- ITO, Ward-36(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

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By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.