IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
[Before Shri J. Sudhakar Reddy, AM & Smt. Madhumita Roy, JM]

ITA No. 739/Kol/2016
Assessment Year: 2010-11

M/s. Maa Engineering……………………………………………………...Appellant
37, B.T. Road, Sukhchar,
Kolkata – 700 115
[PAN : AAIFM 7800 L]

A.C.I.T, CIR 51, Kolkata..Respondent
Manicktala Civic Centre,
Block-3, 2nd Floor,
Ultadanga, Uttarapan Complex,
Kolkata – 700 054.

Appearances by:
Shri Sunil Surana, AR appearing on behalf of the Assessee
Shri Saurabh Kumar, Addl. CIT, Sr. DR appearing on behalf of the Assessee

Date of concluding the hearing : September 12, 2018
Date of pronouncing the order : September 14, 2018

ORDER

PER MADHUMITA ROY, JM

The instant appeal has been filed before us by the assessee against the order dated 11.01.2016 passed by the Ld. CIT(A) -15, Kolkata arising out of the order dated 11.03.2013 passed by the ACIT Circle 51, Kolkata for the A.Y. 2010-11.

2. The main grievance of the assessee is this that the Ld. CIT(A) has erred in law and in fact in adopting the net profit rate at 8% ignoring the assessee's passed records as well as the turnover of the business. Further that the income estimated by the Ld. CIT(A) at Rs. 27,32,914/- as against the declared income at Rs. 8,46,472/- is highly excessive and bad in law.

3. The brief facts leading to the case is that the assessee, a FIRM filed his return of income on 12.10.2010 showing a total income of Rs.

8,46,470/-. The same was processed in AST on 23.05.2011 resulting a demand of Rs. 1,65,990/- and selected for scrutiny assessment.

4. Notice u/s 143(2) of the Act was served upon the assessee on 28.09.2011 followed by notice u/s 142(1) of the Act dated 07.03.2012. The assessee sought for time by a letter dated 27.03.2012. Subsequently the assessee was requested to furnish all documents in connection with the scrutiny assessment under a letter dated 17.10.2012 followed by a show cause notice u/s 274/271 dated 16.01.2013 with a further request to show cause as to why penalty u/s 271(1)(b) should not be imposed upon it for failure of compliance to the notice u/s 142(1) of the Act. Since nothing was forthcoming the Assessing Officer proceeded to pass an ex-parte order u/s 144. The Ld. AO on the basis of the information as revealed from the returned filed by the assessee added total amount of Rs. 41,94,760/- to the income of the assessee which was sought to be justified for non availability of the opportunity of examination, cross-examination, verifying the expenses, stock and depreciation claimed by the assessee as mentioned in the return of income filed by it. Appeal was preferred by the assessee before the first appellate authority against the order passed by the Ld. AO who in turn adopted assessee's net income at 8% of the turnover which comes to Rs. 27,32,914/-. He then added Rs. 18,86,442/- being the balance amount between the net profit of 8% of gross turnover i.e. Rs. 27,32,914/- and Rs. 8,46,472/-, the disclosed income of the assessee which has been impugned before us.

5. At the time of hearing of the instant appeal, learned representative of the assessee has contended before us that the Ld. CIT(A) while rejecting the books of accounts estimated the net profit at 8% of the gross turnover which is too high. He further makes an alternative argument that in the event the estimation of 8% net profit if confirmed by us then the salary of the partners and interest of the partners account are to be considered for deduction. On the other hand, the learned departmental representative relies upon the order passed by the authorities below.

6. We have heard the learned representative appearing for the parties, we have perused the relevant materials available on record. We have gone through carefully the order passed by the Ld. CIT(A) which is impugned before us whereby and whereunder Rs. 18,86,442/- has been confirmed after computing the net profit @ 8% of gross turnover of the business of the assessee. While making such confirmation of addition, the Ld. CIT(A) observed as follows:

> *It is seen from the assessment record that the A.O had issued several notices to the assessee but there was no compliance. Since, the A.O could not verify anything, he made the following additions.*

i. S. Drs.	*: Rs.7,22,305/-*
ii. Closing stock	*: Rs. 4,28,370/-*
iii. Power & fuel	*: Rs. 18,000/-*
iv. Travelling Exp	*: Rs. 48,720/-*
v. Telephone Exp	*: Rs. 24,785/-*
vi. Other Exp	*: Rs. 21,06,108/-*
vii. Depreciation	*: Rs.8.46,472/-*
Total	*:Rs 41,94,760/-*

Some of the above additions like the sundry debtors, closing stock, depreciations etc. cannot be disallowed just like that. If the assessee is having business, then the depreciation is to be allowed. Similarly, the disallowance of closing stock and sundry debtors figure does not affect the income of the assessee. Hence, it is clear that the AO had not applied his mind before making these disallowances.

8. As per the audit report, the assessee is a labour contractor. This year the total turnover is Rs. 3,41,61,424/- and the net profit shown is Rs. 8,46,472/- which comes to 2.48 per cent, which is very low. There was total TDS of Rs. 5,70,328/-, out of which the assessee claimed refund of Rs. 3,08,770/-.

9. It is also noticed from the assessment record that the assessee is having two bank accounts, one in Allahabad Bank, Sodepur Branch, Account No. 20379104895 and the other account is in AXIS Bank, Barrackpore Trunk Road, Account No. 236010200008020. Copy of the bank statement of both these accounts are there on record. Perusal of these bank statements show that the cheques are deposited and the money is immediately withdrawn by way of cash. It shows that substantial portion of expenditure are shown by the assessee in cash for which it has not submitted any evidence during the assessment proceedings. Even during the appellate proceedings, the AR of the assessee only produced some of the books. The cash-book, which contained major details of expenses was not produced for verification. Salary and wages register were produced, which were totally incomplete in nature and thus not reliable. In many of the places, the signature of the recipient was not there. Most of the purchase bills were not produced for verification. All these defects are noted in the order-sheet dated 11.01.2016. Hence, the AR of the assessee was informed that the books are not reliable and liable to be rejected and that net income is to be assessed @8% of the turnover. Sri Surana agreed that the mistakes pointed out above are there and he stated that he did not have anything else to submit in this regard.

10. In view of the above and continuous dilatory tactics of the assessee in seeking adjournment on various dates of hearing and the discrepancies pointed out in the preceding paragraph, it is held that the books of account of the assessee are not reliable and thus rejected. Hence, net profit is computed @ 8% of gross turnover of Rs. 3,41,61,424/- which comes to Rs.27,32,914/-. This is after the allowance of partner's interest and salary. Thus, the total income of the assessee is computed at Rs.27,32,914/-, meaning thereby that Rs.27,32,914 -(minus) Rs.8,46,472 (income disclosed by the assessee) = Rs.18,86,442/- is confirmed.

7. It appears from the observation made by the Ld. CIT(A) that in the absence of the major details of expenses which were not produced for verification and in presence of certain lacunae on the part of the assessee as observed above by the Ld. CIT(A) estimation of net profit @ 8% of gross turnover cannot be said to be unjustified. The observation made by the Ld. CIT(A) does not call for any interference and thus we do not hesitate to confirm the same . However, the salary of the partners and interest of the partner's capital account cannot be clubbed in such addition made by the authorities below. We, therefore, find it fit and proper to remit the issue to the file of the Ld. AO to deduct the salary paid to the partners in the relevant year and the interest to partners capital accounts as paid from the total addition of Rs. 18,86,442/-. With this direction, we partly allow the appeal filed by the assessee for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order Pronounced in the Open Court on 14th September, 2018.

Sd/-	Sd/-
(J. Sudhakar Reddy)	(Madhumita Roy)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 14/09/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Maa Engineering, Kolkata.

2. ACIT, Circle – 51, Kolkata.

3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata