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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 3rd May, 2012.

+ ITA 796/2011

CIT Appellant
Through Mr. Deepak Chopra, sr. standing
counsel

versus

WINNER CONSTRUCTIONS PVT LTD Respondent
Through Mr. Satyen Sethi and Mr. Arta a
Trana Panda, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 ('Act', for short) impugning the order dated 6.8.2010 passed by the Income Tax Appellate Tribunal ('Tribunal', for short) in the case of Winner Constructions Pvt. Ltd. The appeal pertains to assessment year 2006-07.

2. While issuing notice on this appeal vide order dated 31st May, 2011, the notice was limited to the following question of law:

“Whether the Tribunal erred in deleting the trading addition of Rs.42,88,000/- made by the AO after rejecting the books of accounts?”

3. We have heard counsel for the parties and proceed to dictate our decision.

4. The Assessing Officer rejected the books of accounts inter alia recording the following reasons :

(1) The net profit of 1.28% declared by the assessee was low in comparison to prescribed profitability of 8% in Section 44AD of the Act.

(2) The real net profit was Rs. 2,76,592/- against the total turnover of Rs. 10,71,93,334/-. Thus percentage of net profit was 0.25%, which is low. Ms/ Unibuild Engineering and Construction Co. (P) Ltd. assessed in Circle-18(1) had declared GP rate of 6.44% and net profit of 5.97% on a turnover of Rs.42.27 crores.

(3) Project wise books of accounts were not produced.

(4) Closing stock was not properly disclosed.

(5) There were unaccounted outstanding balance.

5. The first two reason recorded by the Assessing Officer by themselves do not justify rejection of the books of accounts. Low gross or

net profit may be a ground or reason to conduct a detailed and thorough investigation and verification, but on stand alone basis cannot be a ground for rejecting the books. Gross profit or net profit rate can vary from year to year depending on favourable or unfavourable factors and market conditions. There can be a fall or reduction in gross profit but this by itself is not a good reason to reject the books. Books results or additions to gross profits cannot be made on the sole or mere fact that the profits are low. This cannot be the circumstance or material aliunde to make estimation of profits. [See ***Pundit Brothers versus Commissioner of Income Tax***, (1954) 26 ITR 56 (Pun.)] System of accounting adopted by an assessee cannot be rejected on the ground that the gross profit disclosed in the books was low, in comparison with others in the same line of business. Low profit with other defect can justify rejection of books, Therefore, we have to examine the three reasons given by the Assessing Officer recorded above to determine whether or not the books of accounts were rightly rejected, but without ignoring the low profit rate.

6. With regard to the reason No.1, the assessee had given the following explanation to the Assessing Officer at the time of assessment :

“Project wise details.

It is already on record that company is executing various Government projects at different places and the same are managed by the common staff of the company. The company is maintaining complete record of direct expenses in respect of each – of the project and overhead and

administrative expenses which are centrally controlled as common expenses of the various projects and same are accounted for in the books of accounts and duly supported and verifiable on the basis of evidence and vouchers. There is thus no infirmity in the maintenance of project wise details. Even otherwise, it is a case of the company with common directors, common finance and common control and as such all these projects are part of the business activities and there is no legal or accounting requirement for maintenance of the independent record of each of the projects. The same system has been in existence in preceding years and as such the technical objection of the Assessing Officer is irrelevant, out of context and without any basis. Further, it is not the case of the Assessing officer that the receipt or expenses recorded in respect of the business activities are incorrect or unverifiable and as such technical objection is of no relevance. All the receipts are fully supported on the basis of TDS certificates and there is no dispute in respect of the same. Further, the Assessing Officer has not recorded any finding or adverse observation about direct or indirect expenses and as such there is no case of any dispute or deficiency in respect of the same. Reference has also made in respect of communication dated 26.12.2007 relating to maintenance of project wise details and the same reproduced hereunder:-

“Maintenance of project wise books of accounts is not mandatory as per Income Tax Act. We are maintaining books of account in Tally package which is a widely used accounting package. Since our present administration system is centrally controlled, hence accounting system is also not maintained project wise. Our present system of account is such that the site supervisors maintain petty cash account for their respective sites which alone- is allocated project wise and all other direct expenditure for project is maintained centrally similarly, all indirect expenses are maintained

centrally. As we are following mercantile system of account, there is no deficiency in our accounting system. Hence there is no reason for invoking section 145.”

(The above quoted paragraph have been taken from the order of the CIT(Appeals), as the Assessing Officer only reproduced the last para of the aforesaid submission in the assessment order.)

7. We may record here that the Id. counsel for the appellant-Revenue had submitted before us that the books of accounts maintained by the assessee were not produced. We do not find any merit in the said contention as this is not alleged or recorded in the assessment order. Id. counsel for the appellant has drawn our attention to the noting dated 19.12.2007 mentioned in the assessment order. We have examined the said noting. A careful reading shows that the Assessing Officer had observed that the assessee was maintaining separate stock register quantity-wise for each site, therefore the assessing officer had observed that the assessee could prepare profitability details of each site on the basis of the said register. The assessee’s stand as noticed above was clear that they were not maintaining separate books of accounts for each site and this was not mandatory under the Act. They were maintaining separate stock register quantity-wise and there was a supervisor who used to maintain petty cash account for each site. All direct and indirect expenses were maintained centrally. The books of accounts were maintained on consolidated basis. This aspect was examined by the CIT

(Appeal) in detail. The CIT(Appeals) also examined the original assessment records and has recorded as under :

“3.8 I have carefully considered the issue in dispute in the light of observation made in the assessment order and submission of the appellant. As regards the issue of non production of books- of accounts and in the light of various communications of the appellant and affidavit of the Chartered Accountant, I have called for the assessment record and it is noticed that the Assessing Officer has not mentioned in any of the hearing, claimed by the appellant, for production of books of accounts, that books of accounts were not produced and as such the contention of the appellant that books of accounts were produced is supported from the affidavit of the Chartered Accountant and letter dtd. 26112/07. However, the basis of addition is not in the context of production or non production of the books of accounts but in respect of various general observations made by the Assessing Officer regarding project wise details, closing stock and unconfirmed balances. It appears that Assessing Officer has made only general observation as in the assessment year 2003-04. I have gone through the appellate order for 2003-04 and it is noted that issue of trading addition was examined in respect of these very objections and appeal of the appellant was allowed and accordingly the appellate order for assessment year 2003-04 is relevant and applicable to the facts of the case for this year also. Further, I have gone through the detailed submission of the appellant in respect of various issues raised by the Assessing Officer and it is noticed that these were only general observation by the Assessing Officer but no other mistake or irregularity was pointed out. There is no dispute or any finding by the Assessing Officer that system of accounting is not in conformity with the past history and there is any change in system and as such the technical

objection about project wise details have no relevance in the light of past history. It was also clarified in the written submission before the Assessing Officer that details of direct expenses of the project were maintained and administration and other overhead expenses were recorded in the books of head office and as such the project wise details were also available for verification. In the light of above facts, there is no justification of the Assessing Officer to draw adverse inference and to reject the books of account to make estimate in respect of trading results. Further, as the accounts were maintained in conformity with the past history and in the absence of any specific mistake or irregularity, there is no ground to dispute correctness of trading results on the basis, of this issue.”

The findings recorded by the CIT(Appeals) have been affirmed by the Tribunal.

8. The aforesaid findings recorded by the appellate authority are factual and Revenue has not been able to show on what basis or reason the same can be challenged/questioned.

9. The second aspect pertains to failure to show closing stock of six projects, out of the nine projects. The Assessing Officer has mentioned in the assessment order that closing stock for only 3 sites namely, Indrapuram site, IOCP Panipat and APMC Azadpur was disclosed. The CIT(Appeals) in the appellate order has recorded that the assessee had pointed out that three project sites were complete and final payments had been received by end of the assessment year. The stand of the assessee before the Assessing Officer was that there was no stock at the sites at

Greater Noida, CPWD, Papan Kala and NBCC as on 31.3.2005. The Assessing Officer has not referred or examined these facts in the assessment order. With regard to the three other projects namely Delhi Jal Board, IGNOU Maidan Gari and EPI, Lodi Road projects, the assessee had stated that the work for Delhi Jal Board was completed in the year 2003-04 and only small quantity of extra work was executed. There was no stock lying on the site as on 31.3.2005. Similarly, in the case of IGNOU the work was almost complete in November, 2004 and no stock was lying on the site on 31.3.2005. For EPI, Lodhi Road site work, 98% R/A bill was submitted in January, 2005 and payment of the same was received during the year. There was no stock lying at the site. The balance work was executed in the next financial year. The CIT(Appeals) accordingly deleted the said addition.

10. The Assessing Officer has not mentioned and referred to the stand of assessee in the assessment order and dealt with the same. In these circumstances we do not find any error in the order of the Tribunal accepting the plea of the assessee and rejecting the appeal filed by the Revenue.

11. The last aspect raised by the Revenue pertains to unclaimed/unaffirmed balances. In the assessment order the Assessing Officer has stated that balances of some parties had remained unconfirmed. The Assessing Officer has not given full details/ particulars of the said parties who had not confirmed the balances. He referred to the

notice sent to Dhanishta Builders under Section 133(6) of the Act. Two alleged discrepancies in the balances of Vardhaman Traders and Dhanishta Builders were recorded. Against Vardhaman Traders there was balance of ₹3,17,012/- but no purchases were made. Dhanishta Builders had an opening balance of ₹4,81,894/- and a closing balance of ₹20,55,135/-, but no confirmation was filed. Assessment order records that on 19.12.2007, the assessee was asked to furnish confirmation and the case was adjourned to 26.12.2007. The assessee on 26.12.2007 replied that they require more time to secure confirmation. It was further stated that copy of the bank accounts was being produced to establish that payment was made by cheque. The assessment order was passed on 28.12.2007.

12. The CIT(Appeals) in the order has mentioned that they were 7 parties and the assessee had furnished confirmations from the said 7 parties. Details and particulars are mentioned in the order passed by the CIT(Appeals). He has recorded that Vardhaman Traders were paid during the assessment year and there was no closing balance. With Dhanishta Builders, the assessee had a running account. Opening balance was ₹4,81,894/- and closing balance was ₹20,55,135/- and the confirmations etc. was furnished before the Assessing Officer.

13. In our opinion the Tribunal was justified and right in dismissing the appeal of the Revenue in view of the aforesaid factual position.

14. The aforesaid question of law is answered in affirmative i.e. against the appellant revenue and in favour of the assessee. The appellant-Revenue will be pay cost of ₹10,000/- to the assessee.

SANJIV KHANNA, J.

R.V.EASWAR, J.

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