

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "1-2, SMC": NEW DELHI  
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3735/Del/2018  
(Assessment Year: 2008-09)

Rajesh Gupta, 52, Anand Vihar, Pitampura, New Delhi PAN: AANPG5093Q	Vs.	ITO, Ward-62(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ved Jain, Adv Shri Ashish Goel, CA Shri Kislaya Parashar, Adv
Revenue by:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	02/03/2020
Date of pronouncement	20/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT(A)-27, New Delhi dated 16.03.2018 for the Assessment Year 2008-09.
2. The assessee raised the following grounds of appeal:-
  - “1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eyes of law and on facts.*
  2. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order are bad, both on the facts and in law and liable to be quashed, as the statutory conditions and procedure prescribed under the statute have not been complied with.*

3. (i) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the AO are bad in the eyes of law, as the reasons recorded for the issue of notice under section 148 are bad in the eyes of law and are contrary to the facts.*
- (ii) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and have been recorded without application of mind on the part of the AO.*
4. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law in rejecting the contention of the assessee that AO has no jurisdiction to re-open the case of the assessee since the belief has already been formed in the case of M/s Satyam Builders (Prop. Sh. Rajesh Gupta) by serving statutory notice of reopening assessment by AO of Ward 62(3).*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs.5,73,444/- on account of estimation of gross profit @10% by the Ld.AO as against 8% declared by the assessee on facts.*
6. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law while confirming the above addition @ 10% despite the fact that the same amount has already been considered @ 8% by the Ld. ITO, Ward 62(3) in the case of Satyam Builders*
7. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that AO has no jurisdiction to re-open the case of the assessee since the belief has already been formed in the case of M/s Satyam Builders.”*
3. Brief facts of the case shows that the assessee is an individual. He filed his return of income on 30.09.2008 declaring income of Rs. 7,66,780/-. The case of the assessee was reopened u/s 148 of the Act vide notice dated 31.03.2015. The assessee filed return of income on 21.09.2015 of Rs. 2197077/-.

4. The reasons for reopening were that Investigation Wing received a tax evasion petitions stating that the assessee being a proprietor of M/s. Satyam Builders has undisclosed income on account of booking of bogus expenses by the bogus bills for Assessment Year 2008-09. The investigation wing summons to the assessee to produce the necessary details. The reasons also noted that as per letter dated 26.03.2014 there is a allegation of booking of bogus expenses in case of proprietorship namely stayam builders of assessee and other partnership firm namely M/s. Satyam Builders. Before the Investigation Wing the assessee did not file any information. On verification of the ITD software it was noted that for Assessment Year 2008-09 during the course of enquiry the assessee has surrendered Rs. 14.25 lacs for Assessment Year 2008-09. On perusal of the bank account, it was found that assessee has cash withdrawal of Rs. 1260648/-, therefore, his case was reopened as per reasons recorded on 31.03.2015. The assessee has filed the higher return of income in response to notice u/s 148 of the Act of Rs. 2197077/- compared to the return filed u/s 139 of the Act of Rs. 766780/-. During the assessment proceedings it was found that turnover of the assessee is Rs. 2,86,72,211/-. Thus, the accounts are subject to audit. The ld AO took the profit @10% of the gross receipt at Rs. 28,67,221/- and made an addition of differential basis of Rs. 5,73,444/-. The ld AO further found that assessee has withdrawn cash of Rs. 12606488/- and estimated 10% profit therein. Further unexplained cash deposit of Rs. 410000/- was also found which was added to the income. Consequently, return of Rs. 21,97,077/- was assed at Rs. 44,41,860/- as per order u/s 147 dated 23.03.2016.

5. The assessee preferred appeal before the 1d CIT(A). He upholds the validity of the reopening proceedings. He also confirmed the addition 10% of the receipt, however he held that the same receipts have been taxed twice once in the hands of the assessee as proprietor of Satyam Builders and second in the partnership firm M/s. Satyam Builders. Therefore, he directed to 1d AO to examine the same and give relief accordingly. With respect to the addition of cash withdrawal and unexplained bank deposit of Rs. 1260648/- and Rs. 410000/- respectively, he deleted the addition. Therefore, aggrieved with the order of the 1d CIT(A) the assessee is in appeal before us.
6. The 1d AR did not press any other issue in the appeal but only requested for addressing the estimation of gross profit @8% instead of 10% confirmed by the 1d CIT(A). He further submitted that the 1d CIT(A) is directed to give benefit of the turnover in the partnership firm as well as the proprietary concern. He further stated that in case of M/s. Satyam Builders the 1d AO himself for Assessment Year 2008-09 has accepted net profit ratio of 8%. He further referred to the order passed u/s 250 of the Act on 27.04.2018 by the 1d AO giving effect to the appellate order of the 1d CIT(A), he submitted that the 1d AO has not accepted that order of CIT (A) that turnover has to be been taxed only in case of one assessee , i.e. either in the hands of the assessee individual or in the case of the partnership firm.
7. The 1d DR vehemently supported the order of the 1d CIT(A).
8. We have carefully considered the rival contentions and also found that the issue where one turnover can be taxed in the hands of two different assessee one being partnership firm M/s. Satyam Builders and another being proprietary concern of the

assessee namely satyam Builders. Our answer is emphatically No. Therefore, the ld AO is directed to delete the addition in the hands of the assessee to the extent of the turnover considered in case of Ms/. Satyam Builder a partnership firm. Therefore, the ld AO will reduce the addition in the hands of the assessee on the turnover which has already been taxed in the hands of M/s. Satyam Builders as a firm. The next issue is what should be the percentage of the gross receipt to be taken as net income from the suppressed turnover. In case of M/s. Satyam builders , partnership firm , in the assessment proceeding u/s 143(3) read with section 147 of the Act for Ay 2008-09 , the ld AO himself accepted it @8% There is no change in the business model of the partnership firm as well as the business of the assessee. Therefore, we direct the ld AO to adopt the profit ratio of 8% as net profit on the gross receipts. Accordingly, ground Nos. 4 and 5 of the appeal are allowed.

9. All other grounds are not pressed, hence, they are dismissed.
10. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 20/05/2020.

-Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 20/05/2020

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi