

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "D" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.613/Kol/2016**  
Assessment Year:2009-10

J.P. Enterprise Mecheda, Tamluk, Purba Medinipur Pin-721137 [PAN No.AAAAJ 0779 Q]	<b>बनाम / V/s.</b>	Income Tax Officer, Ward-27(3), Haldia Basudevapur Khanjanchak, Haldia, Purba Medinipur, Pin-721602
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Atin Das, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Rajat Kumar, Kureel, JCIT-DR
सुनवाई की तारीख/Date of Hearing	20-01-2017
घोषणा की तारीख/Date of Pronouncement	24-02-2017

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-7, Kolkata dated 27.01.2016. Assessment was framed by ITO Ward-3, Haldia u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 26.09.2011 for assessment year 2009-10.

Shri Atin Das, Ld. Advocate appeared on behalf of assessee and Shri Rajat Kumar Kureel, Ld. Departmental Representative represented on behalf of Revenue.

2. Briefly stated facts are that assessee is a Partnership Firm and engaged in business of civil construction. The assessee for the year under consideration has filed its return of income on 29.09.2009 declaring total income of ₹3,04,090/- which was processed u/s 143(1) of the Act. Subsequently case was selected for scrutiny and accordingly notice u/s 143(2)/142(1) of the Act was issued upon assessee. The

assessment was framed u/s. 143(3) of the Act at a total income of ₹19,00,520/- after making certain additions / disallowances to the total income of the assessee which are discussed herein below.

3. First issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹7,39,019/- on account of undisclosed contract works.

4. The assessee in the year under consideration has shown value of gross contract works for ₹1,60,92,594/- only. The assessee claimed to have executed the work for single party namely, Kolaghat Thermal Power Station (KTPS for short). The AO, during the course of assessment proceeding gathered information from KTPS u/s.133(6) of the Act and found that assessee has executed the works for ₹1,68,31,608/-. Accordingly, AO found the difference of ₹7,39,014/- which was under-stated by the assessee in its profit and loss account. On question by the AO about the aforesaid difference the assessee failed to reconcile the same to the satisfaction of AO. Furthermore the explanation submitted by assessee was also treated as baseless by the AO. Accordingly, AO treated the amount of ₹7,39,014/- as income from undisclosed sources and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee submitted that the amount ₹7,39,014/- was received in the subsequent financial year 2009-10 relevant to AY 2010-11. The assessee further submitted that the aforesaid sum was received through banking channel, which was duly disclosed in the books of account of assessee. Therefore, the action of AO treating the same as income from undisclosed source cannot stand. However, Ld. CIT(A) disregarded the claim of assessee and confirmed the order of AO by observing as under:-

*“2.3 I have considered the submissions made by the appellant. The appellant has contended that the difference was due to outstanding receivable which was received in the month of April, 2009 relevant to the A.Y 2010-11. However, the appellant did not dispute the total receipt accrued for the financial year 2008-09 relevant to the AY 2009-10 at Rs.1,68,31,608/-. During the course of appeal proceedings I have asked the A/R of the appellant regarding the claim of TDS. The A/R of the appellant stated that the TDS was claimed on the entire amount. Further as per the profit and loss account it is notified that the appellant is following the mercantile system of accounting and the appellant required to admit the income on accrual basis not on cash basis. Even if the explanation of the appellant is considered the total receipt of Rs.168,31,608/- should be assessed as income on the basis of system of accounting followed by the appellant. Therefore, the AO rightly made the addition of Rs.7,39,014/- and the addition is confirmed and this ground of appeal is dismissed.”*

Being aggrieved, assessee came up in second appeal before us on the following ground of appeal.

1. *That under the facts & circumstances of the case the Ld. CIT(A) erred in confirming the addition of Rs.739019.00, as an undisclosed contract work, instead of et profit rate on account of undisclosed contract work. This is quite unjustified, unreasonable and bad in law. So the net profit rate on undisclosed contract work should be allowed.”*

6. Before us Ld. AR filed paper book which is running from pages 1 to 40 and reiterated same submissions as made before Ld. CIT(A). On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

7. We have heard the rival contentions and perused the materials available on record. The grievance of the assessee in this appeal is with regard to the confirmation of addition of Rs. 7,39,014.00 on account of undisclosed contract work. The AO during assessment proceedings observed that the assessee has understated its contract receipts from M/s KTPS for the aforesaid amount. The AO discovered this undisclosed income as a result of mismatch found in pursuance to the notice issued under section 133(6) of the Act. The assessee has shown gross contract work in the year under consideration for Rs.1,60,92,594.00 from KTPS but on confirmation under section 133(6) of the Act from the party it was ascertained that the gross contract work of Rs.1,68,31,608.00 was executed. Accordingly the difference of Rs.7,39,014.00 was treated as undisclosed income of the assessee which was subsequently confirmed by the learned CIT(A) .

Admittedly, the assessee is following mercantile system of accounting and this amount was to be shown in the year under consideration as income. As per the assessee the said amount was received in the subsequent financial year dated 8<sup>th</sup> April 2009 which was shown in the subsequent assessment year. Indeed as per accounting principal the assessee should have shown this amount as income in the year under consideration but it has been shown in the subsequent assessment year. At the same time there is also no dispute with regard to the amount of the TDS which has been claimed in the year under consideration on such amount. Now the question arises whether the aforesaid amount has been offered to tax in the subsequent year or not if

the answer is yes then the addition of the same would amount to double taxation i.e. in the year under consideration and subsequent year. It is important to note that this is not the object of the legislature to levy the tax on the same income twice. As per the various principles laid down by the Various Courts the income tax should be levied at the correct income of the assessee. However the learned AR before us has not brought anything on record suggesting that the aforesaid amount has been offered to tax in the subsequent year. However, in the interest of Justice and fair play we're inclined to restore this issue to the file of AO to adjudicate the matter afresh as per law and to check whether the same amount has been offered to tax in the subsequent year or not. In case it has been offered then there will be no addition in the year under consideration in these facts & circumstances. If it is a case that the assessee inadvertently omitted to show the aforesaid amount as income of the assessee in the year under consideration then the same amount must have been shown as income in the subsequent year. There is no dispute with regard to the payment received by the assessee of the impugned amount. The assessee before us is a partnership firm and its accounts are subject to audit under section 44AB of the Act. Since the amount is coming in the disclosed bank account of the assessee then assessee has to offer the same as income to the tax authorities.

The argument of the learned AR that the entire amount cannot be added to the total income of the assessee and only profit element can be added as undisclosed income of the assessee on such amount, is not really convincing. It is because of the fact all the expenses have been duly claimed by the assessee and there is no whisper in the order of lower authorities suggesting that the expenses in relation to the impugned income has not been claimed in the profit and loss account. Therefore if such income needs to be added then the entire amount will be liable to be added in the total income of the assessee as the assessee already has claimed the expenses in relation to such income. In view of above we are inclined to restore this issue to the file of AO for fresh adjudication as per law. Hence, this ground of appeal of the assessee is allowed for the statistical purposes.

8. Next issue in ground No.2 is not pressed. Hence, same is dismissed as not pressed.

9. Last issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the addition of ₹7,21,874/- on account of various expenses on *ad hoc* basis.

10. The assessee in the year under consideration has claimed several expenses but failed to substantiate the same on the basis of documentary evidence. Therefore, AO had no option except to make the disallowance @ 5% of total expense (16473483 x 5% = 7,21,874) on estimated basis. The AO accordingly disallowed and added to the total income of assessee.

11. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee submitted that all expenses were incurred by assessee in the course of business. Similar kind of expenses was also incurred in earlier years and same were accepted by Revenue. The assessee further submitted that disallowance of 5% of the total expenses on estimated basis is very high and unreasonable. However, Ld. CIT(A) confirmed the order of AO by observing as under:-

*“4.3 I have considered the submissions made by the appellant and gone through the assessment order. The AO disallowed the expenses for the appellant’s failure to submit any evidence in support of the claim of expense under various heads. The appellant has given opportunities t the remand stage to produce the books of account and to prove the genuineness of the expenses. During the remand stage also the appellant did not produce the books of account and furnish the evidences. The appellant has admitted the income of Rs.3,04,090/- against the turnover of Rs.1,60,92,594/- which works out to 1.89% which was very low on comparable cases. Therefore, I do not find any reasons to interfere with the AO and the addition made by the AO is confirmed. This ground of appeal is dismissed.”*

Being aggrieved, assessee came in second appeal before us on the following grounds.

12. Ld. AR before us reiterated same submission as made before Ld. CIT(A). On the other hand, Ld. DR relied on the order of Authorities Below.

13. We have heard the rival contentions and perused the materials available on record. The grievance of the assessee in this appeal is with regard to the confirmation of addition of Rs. 7,21,874.00 on *ad hoc* basis. At the outset we find that the assessee failed to furnish any documentary evidence in support of expenses claimed in the

profit and loss account before the AO as well as learned CIT(A). The onus lies on the assessee to justify the expense claimed by the assessee on the basis of documentary evidence. In such situations the lower authorities had no option except to make the disallowances on the basis of estimate. Indeed before making any disallowances the AO should have verified the reasonableness of the disallowances after making comparison with the earlier year financial data of the assessee. In the instant case the AO has not made any reference to the earlier year financial data before making any disallowance. However it does not mean the disallowances made by the AO is unreasonable in the given facts & circumstances. The AO had to resort to the disallowances on estimated basis in the absence of any documentary evidence. However in the interest of Justice and fair play we are inclined to give one more opportunity to the assessee to justify the expenses claimed by it before the AO. Therefore we are restoring this issue to the file of AO for fresh adjudication as per law. Hence this ground of appeal of the assessee is allowed for statistical purposes.

**13. In the result, assessee's appeal stands partly allowed for statistical purpose.**

Order pronounced in open court on 24/02/2017

Sd/-  
(S.S.Viswanethra Ravi)  
Judicial Member  
\*Dkp, Sr.P.S

Sd/-  
(Waseem Ahmed)  
Accountant Member

दिनांक:- 24/02/2017 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-J.P. Enterprise, Mecheda, Tamluk, Purba Medinipur-721137
2. प्रत्यर्थी/Respondent-ITO Ward-27(3), Basudevpr Khanjanchak, Haldia, Purba Medinipur, Pin-721602
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता