

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL MEMBER

I.T.A No.1953/Bang/2017
(Assessment Year : 2011-12)

Shri. Natesh Subramanya Jayaram,
PWD Contractor, D No.X/1721 M – D Block,
Somwarpet, Kodagu district - 571 236 .. Appellant
PAN : AFEPJ2909J

v.

Income-tax Officer,
Ward – 1, Madikeri .. Respondent

Assessee by : Shri. Sandeep C, Advocate
Revenue by : Shri. Padmameenakshi, JCIT

Heard on : 09.11.2017
Pronounced on : 17.11.2017

ORDER

PER LALIT KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the CIT (A), Mysuru, dt.28.02.2017, for the assessment year 2011-12, on the following grounds :

2. *That the learned assessing officer erred in law and on facts in adding a sum of Rs.42,33,642 as income.*

3. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs.42,33,642 as income without considering that the material cost and overheads will be included in the gross amount.*

4. *That the learned Commissioner of Income tax (Appeals) ought to have held that only the net profit out of the above sum should be considered as income and not the total amount received.*

02. Brief facts are, the assessee is an individual engaged in the business of executing public civil works awarded on contract basis by the Public Works Department of the Government of Karnataka. The assessee filed a return of income on 01.10.2011 declaring total income of Rs.7,24,400/-. The assessee's case was selected for scrutiny and notices us.143(2) and 142(1) were issued, in response to which assessee filed certain information. It was recorded by the AO that a sum of Rs.45,33,494/- was received from the Government departments but was not declared by the assessee as income. The details of the amounts received from various Government departments are as under :

Sl No	Name of the Govt. department	Amount in Rs.
1	Executive Engineer, WP & IWTD Spl Division, Hunsur	25,43,404
2	Chief Officer, Taluk Panchayat, Somawarpet	15,84,090
3	Finance Controller, MADB, Mainada Siri, B H Road, Shimoga	4,06,000
	TOTAL	45,33,494

It was the case of the assessee that the AO cannot make the addition of the whole of the amount received by the assessee was not the profit, but was towards compensation or the services rendered, material utilised etc., and therefore only part of the amount can be taken into consideration for the purposes of arriving at gross profit of the assessee. It was the case of the assessee before us and before the lower authorities that the amount received by the assessee from the Government department included the material cost, statutory deductions, overheads etc., and therefore corresponding expenditure also to be taken into account and only the profits have to be considered as income. Our attention was drawn by the Id. AR, to the GP rate for the FY 2009-10 as 7.6% and for the subsequent FY 2011-12 at 10.30%.

03. In view of the above, it was submitted that the order passed by the AO is required to be modified to the extent the necessary correction of GP addition be made based on the profit derived on such suppressed receipt for doing the contractor works .

04. On the other hand, the Ld. DR relies upon the order passed by the authorities below.

05. We have heard the rival contentions and perused the material. It is an admitted case of the assessee before us that the assessee is a government contractor. It is also the admitted case of the parties before us that the amount of Rs.45,33,494/- was received by the assessee on account of discharging of his contractual duties under the

contract awarded to him by various government departments. In our view, the entire amount received by the assessee from the Government departments cannot be considered as a profit of the work discharged by the assessee under the contract. Undoubtedly the amount received by the assessee from the government departments would definitely include the element of profit along with the material cost, statutory deductions, overheads etc., Therefore the addition made by the AO and confirmed by the CIT (A) for the whole amount of Rs.45,33,494/- cannot be sustained and only a reasonable amount can be considered as a profit for the purposes of arrived at the GP addition.

06. In the earlier years, the GP rate made was 7.6% and in the subsequent year the GP rate shown by the assessee was 10.30%. Both the GP rates are far below the GP rate shown by the assessee during the year under consideration. Though the gross turnover for both the assessment years prior and after were much more, but nonetheless, considering the totality of the circumstances and as agreed by the Ld. AR at the time of hearing that if the GP rate is fixed at 15% that will be in the interest of justice to both the parties. As there is no mechanism to calculate the profit earned by the assessee on the amount received by the assessee pursuant to the contract work, therefore we have to undertake a guess work to arrive at GP and accordingly, we have no hesitation to direct the AO to take 15% as GP rate instead of adding the whole amount to the income of the assessee. Needless to say if the whole amount of Rs.45,33,494/- is added to the income of the assessee then GP rate would be 29.29%. In the business

in which the assessee is engaged, it will be preposterous to consider the GP rate at 29.29%, as no contractor can work at the rate of 29.29%. Accordingly the addition made by the AO to the tune of Rs.45,33,494/- is without any merit. Therefore, we hold that the GP rate should be taken at 15% instead of 29.29% or 10.63%.

07. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17th day of November, 2017.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(LALIT KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 17.11.2017

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

SENIOR PRIVATE SECRETARY