

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” SMC BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT

ITA. No.1347 & 1348/Hyd/2015
Assessment Years: 2003-04 & 2004-05

M/s. Upkar Infra Projects Pvt Ltd., 6-3-347/22/102, 101, Sai Lille Apartments, Dwarakapuri Colony, Panjagutta, Hyderabad. PAN: AABCK 4691 F	vs.	Dy. Commissioner of Income Tax, Circle-3(3), Hyderabad.
(Appellant)		(Respondent)

For Assessee:	Shri P. Ravi Seshagiri Rao
For Revenue :	Smt. N. Swapna, DR

Date of Hearing :	05.02.2018
Date of Pronouncement :	05.02.2018

ORDER

PER D. MANMOHAN, VP.

These two appeals by the assessee are directed against the combined order passed by Ld. CIT(A)-5, Hyderabad and they are with respect to the AYs 2003-04 and 2004-05.

2. At the outset, it may be noticed that the matters pending before the Tribunal arise out of the direction given by the Tribunal in the first round of litigation whereby consequential orders were passed by the Assessing Officer. These appeals were filed in 2015 and the case was adjourned on number of occasions but, on some ground or the other, the case was getting adjourned at the request of the assessee. Now the Ld Counsel for the assessee seeks adjournment on the ground that a

paper book is being filed today; However, no such paper book has been filed. It was further submitted that in respect of the A.Y. 2006-07 a Miscellaneous Application is filed by the assessee which is posted for hearing on 09.02.2018 and therefore, he requested for posting all the appeals together.

3. At the outset, it deserves to be noticed that the case was adjourned on number of occasions and the assessee did not file the paper book till today and hence, there is no need to wait further. Even if the Miscellaneous Applications are posted for hearing, an appropriate decision can always be taken in that case independently and there is no need to wait eternally for the disposal of that appeal. I therefore reject the request and proceed to dispose of these appeals.

4. Ld Counsel appearing for the assessee did not make any elaborate submissions except relying on the arguments advanced in the form of grounds of appeal.

5. On the other hand, Learned Departmental Representative submitted that the assessee is engaged in the business of 'civil contracts' and declared a total income of Rs. 12,66,390/- which was originally processed u/s 143(3) of the Act but, later on the case was taken up for scrutiny wherein the assessment was completed by estimating the profit @ 12.5% on gross receipts offered by the assessee and depreciation was also allowed as per the Income Tax Act, 1961.

6. On an appeal filed by the assessee, Ld. CIT (A) directed the A.O. to estimate the profit @ 10% on gross receipts net of depreciation as already allowed by the Assessing Officer. On further appeal, ITAT set aside the issue vide order dated 21.01.2013 directing the AO to

complete the assessment *de novo* keeping in mind the decision of Hon'ble Andhra Pradesh High Court in the case of Indwell Constructions vs. CIT and the decisions of the ITAT on the same line of reasoning. Accordingly, the AO proceeded to complete the assessment u/s 143(3) r.w.s. 254 of the Act wherein he observed, keeping in mind the decisions cited (supra), estimation of profit @ 5% on gross sub-contract receipts, which works out to Rs. 31,99,282/-, is reasonable and accordingly completed the assessment. For the AY 2004-05 also the Assessing Officer estimated the profit @ 5% on sub-contract receipts and completed the assessment.

7. Aggrieved, assessee contended before the Ld. CIT(A) that the AO erred in not allowing depreciation. It was also contended that the AO erred in estimating the income @ 5% of the gross contract receipts by reducing only seignorage charges whereas he ought to have reduced other recoveries. Before the Ld. CIT(A) it was also contended that the principal contractor, for whom the appellant carries out sub-contract work, declared net profit of 7.24% only for the AY 2003-04 and if the rate of 8% is to be applied to the principal contractor suitable adjustment to be made to the profit estimated by the Assessing Officer.

8. Ld CIT (A) rejected the contentions of the assessee by giving detailed analysis of facts, beginning from para 6 onwards. Ld DR therefore strongly relied on the order passed by the Ld CIT (A).

9. I have carefully considered the rival submissions and perused the record. There is no material on record to justify the submissions made by way of grounds of appeal before the Tribunal and no material was placed to contradict the findings of the Ld CIT (A) and the Assessment Years involved here are 2003-04 and 2004-05. If the assessee is unable

to furnish any material even after 13 / 14 years, it is not advisable to give further time at this juncture permitting assessee to file evidence, if any, at this stage. Under these circumstances, I do not find any infirmity in the orders passed by the Ld CIT (A) and accordingly dismiss the appeals filed by the assessee. Order pronounced in the open court on 05th February, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 05th February, 2018.

OKK, Sr.PS

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3.	CIT (A)-5, Hyderabad.
4.	Pr. Commissioner of Income Tax-5, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File