

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

Before: **Shri J. Sudhakar Reddy, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 452/Kol/2015

A.Y: 2010-11

Ram Sevak Shaw
PAN ALAPS0042F
[Appellant]

Vs.

A.C.I.T, Cir-2, Durgapur
[Respondent]

I.T.A No. 787/Kol/2015

A.Y: 2010-11

D.C.I.T, Cir-2, Durgapur
[Appellant]

Vs.

Ram Sevak Shaw
[Respondent]

For the Appellant/Assessee : Shri Somnath Ghosh, Advocate, Id.AR
For the Respondent : Shri S. Dasgupta, Addl.CIT, Id.DR

Date of hearing : 04-01-2018

Date of pronouncement : 23-03-2018

ORDER

Shri S.S.Viswanethra Ravi, JM:

The cross appeals by the Assessee and Revenue are directed against the common order of the Commissioner of Income Tax (Appeals), Durgapur dt. 30-03-2015 for the A.Y 2010-11.

2. Since the issues involved in both the appeals of assessee and revenue are common and inter-linked with each other, they were heard together and disposed of by this consolidated order with the consent of both the parties for the sake of convenience.

3. First, we take up the appeal in ITA No. 452/Kol/2015 for the A.Y 2010-11- by the assessee.

ITA No. 452/Kol/2015 A.Y 2010-11

4. At the time of hearing before us the Id.AR submits that the issue involved in the appeal of assessee is covered by the order dt.

26-12-2013 of the Co-ordinate Bench, ITAT, Kolkata, C, Bench, in assessee's own case for the A.Y 2008-09, ITA No. 1646/K/2011, copy of the same is on record and referred to para 6 of the said order and argued that the profit may be estimated at 8% in terms of the above said order for the A.Y under consideration.

5. On the other hand, the Id.DR relied on the orders of the AO & CIT-A.

6. Heard rival submissions and perused material on record and detailed paper book as filed by the assessee before us. We find that the assessee declared his total income of Rs.23,59,390/- and the AO after scrutiny determined the total income of assessee at Rs.93,54,960/- by making the following additions of Rs.69,95,571/- :-

u/s. 40A(3) under unexplained expenditure towards fabrication charges	Rs.14,12,742/-	
u/s. 40(a)(ia) unexplained expenditure towards supervision & testing charges	Rs.4,52,000/-	
late payment of service tax	Rs.2,08,400/-	
Wages	Rs.12,54,040/-	
	Rs. 4,27,569/-	
	Rs.32,40,820/-	Rs.69,95,571/-

7. We further find that the Tribunal in its order dt. 26-12-2013 in assessee's own case *supra* estimated the profit @ 8% on contractual receipts. The CIT-A placed his reliance on the said order dt. 26-12-2013 in assessee's own case as decided by the Tribunal and estimated the profit at 10%. Therefore, following the said order of the Tribunal, we direct the AO to estimate the profit at 8% of gross contractual receipts as declared by the assessee in its P & L account of Rs. 4,16,75,079/-. Therefore, the grounds raised by the assessee in the appeal are partly allowed.

8. The appeal of assessee in ITA No. 452/Kol/2015 for the A.Y 2010-11 is partly allowed.

9. Now, we shall take up the appeal-ITA No. 787/Kol/2015 for the A.Y 2010-11- by the revenue.

ITA No. 787/Kol/2015 for the A.Y 2010-11-by the revenue

10. We find that the facts and issue involved in the appeal of revenue are identical and similar with the appeal of assessee-ITA No. 452/Kol/2015, which we have already disposed by estimating the profit @ 8% of gross contractual receipts, which already estimated the Tribunal vide its said order dt. 26-12-2013 in assessee's own case and the CIT-A also following the same estimated the profit at 10%. Keeping in view of the order dt. 26-12-2013, we direct the AO to estimate the same at 8%. The grounds raised by the revenue in the appeal are liable to be dismissed.

11. The appeal of revenue in ITA No. 787/Kol/2015 for the A.Y 2010-11 is dismissed.

12. In the result, the appeal of assessee-ITA No. 452/Kol/2015 for the A.Y 2010-11 is allowed in part and that of revenue's appeal-ITA No. 787/Kol/2015 is dismissed.

Order pronounced in the open court on 23-03-2018

Sd/-
J. Sudhakar Reddy
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 23 -03-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Ram Sevak ShawC/o S.N Ghosh & Associates, Advocates,Seben Brothers, Lodge, P.O Buroshibtala, P.S Chinsurah, Dist-Hooghly-712105.
2. Respondent /Department: The ACIT/DCIT-Cir-2, Aaykar Bhawan, Durgapur, Aaykar Bithi, P.O City Centre, P.S Durgapur, Dist Burdwan-713216.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Sr.PS,H.O.O,ITAT, Kol

