IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 1878/Hyd/2013
Assessment Year: 2010-11

Asst. Commissioner of Income-tax, Circle – 9(1), Hyderabad.	vs.	M/s S.K.R. Constructions, Suryapet. PAN – AAZFS8077Q
(Appellant)		(Respondent)

ITA No. 1819/Hyd/2013
Assessment Year: 2010-11

M/s S.K.R. Constructions, Suryapet. PAN – AAZFS8077Q	vs.	Asst. Commissioner of Income-tax, Circle – 9(1), Hyderabad.
(Appellant)		(Respondent)

Revenue by	:	Shri J. Siri Kumar
Assessee by	:	Shri S. Rama Rao

Date of hearing	14-11-2017
Date of pronouncement	24-01-2018

O R D E R

PER S. RIFAUR RAHMAN, A.M.:

Both these appeals are cross appeals directed against the order of CIT(A) – VI, Hyderabad, dated 09/09/2013 for AY 2010-11.

2. Briefly the facts of the case are that the assessee is a civil contractor. It e-filed its return of income for AY 2010-11 on 14/10/2010 declaring a total income of Rs. 1,69,88,690/-, against

which the AO completed the assessment u/s 143(3) of the Act and determined the assessed income of the assessee at Rs. 14,80,41,310/- by making various additions. Aggrieved, the assessee preferred an appeal before the CIT(A) and the CIT(A) sustained some additions and deleted some additions, which are tabulated in the following manner:

S. No.	Description of addition made by AO	Amount of addition made (Rs.)	Amount of addition sustained (Rs.) by CIT(A)	Relief allowed
1	Introduction of capital by partners treated as unexplained cash credits by the AO to the extent of Rs. 23 lakhs	23,00,000	3,00,000	20,00,000
2	Unsecured loans treated as unexplained cash credits by the AO	26,50,000	21,50,000	5,00,000
3	Disallowance of expenditure u/s 40A(3) of the Act.	2,99,22,945	0	2,99,22,945
4	Addition on account of reconciliation of 26AS statement with gross receipts shown by assessee	1,83,31,891	24,85,194	1,58,46,697
5	Disallowance on account of sub-contract payments	7,09,73,678	0	7,09,73,678
6	Interest on TDS debited to profit & loss a/c	2,66,105	2,66,105	0
7	Disallowance of certain expenditure	66,08,000	0	66,08,000

3. The revenue filed revised grounds of appeal with 10 grounds on 08/02/2017 whereas along with appeal memo it has filed only 4 grounds, out of which effective grounds are only two i.e. ground Nos. 2 &3. On record, it was noticed that revenue has not filed approval from Pr. CIT u/s 253(2) for filing revised grounds of appeal, which was conceded by the ld. DR. Therefore, we reject revised grounds of

appeal filed by the revenue. Therefore, we are constrained to adjudicate the original grounds of appeal filed by the revenue.

4. Let us deal with the issues ground wise. With regard to revenue grounds of appeal i.e. ground Nos. 2 & 3, the same issues were also contested by the assessee in its ground of appeal i.e. ground Nos. 2, 3 , 7 & 8. Grounds raised by the revenue are as under:

> *"02. Whether the Ld. CIT(A), is correct in law in holding that the capital introduced by the partners of the firm is out of the sources available with them, in the circumstances when the assessee firm could not establish the same by way submitting any documentary evidences/cogent material to substantiate the same.*
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> *03. Whether the Ld. CIT(A), is correct in law directing the Assessing Officer to estimate the net profit of the assessee @10% on net contract receipts, when the books of accounts were accepted by the Assessing Officer and additions were made, as per the defects pointed out of the books produced."*

5. With regard to ground No. 2, additions made u/s 68, the relevant facts are as under:

5.1. As regards the Introduction of capital by partners treated as unexplained cash credits by the AO to the extent of Rs. 23 lakhs, the AO observed that the following partners had introduced cash towards capital:

1. Sri Arun Kumar	Rs. 5,00,000
2. Sri Ravinder Rao	Rs. 3,00,000
3. Sri Pradeep Kumar	Rs. 5,00,000
4. Smt. Hemalatha	Rs.10,00,000
5. Sri S. Krishna Rao	Rs. 1,00,000
Total	Rs.24,00,000
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The AO asked the assessee to file copies of returns of income in case of the said first four partners, for the amount of Rs. 23,00,000/- and after going through the details furnished, the AO held that the partners had failed to establish their source of income and therefore,

he dismissed the claims of the partners and brought the amount of Rs. 23,00,000/- to tax u/s 68 of the Act.

5.2. Before the CIT(A), the assessee submitted that the identity of the partners is not in doubt. The genuineness of the transaction also cannot be doubted as all of them are the partners of the firm and received interest from the investments made by them. Further, it was submitted that the interest from firm is admitted in their returns of income and they were also assessed to tax. They have also explained the source for investment of the funds. Therefore, it was submitted that all the requirements of a genuine credit were fulfilled by the assessee herein. Therefore, it was submitted that the AO was not justified in making addition u/s 68 of the Act.

5.3. After considering the submissions of the assessee, the CIT(A) sustained the addition to the extent of Rs. 3,00,000/- and gave relief to the assessee of Rs. 20,00,000/- by observing as under:

> *"5.3 Perused the observations of the AO and the submissions of the assessee. As could be seen the credits in the books of the firm were in the names none other than the partners of the firm. Indeed it is a fact that the credits are in the form of cash. However, the fact remains that all such partners have their own sources of incomes, which of course are matters of details, to explain the investments made by them, including the capital brought into the books of the firm, during the year. Further, Sri. Arun Kumar, Sri. Pradeep Kumar and Mrs. Hemalatha are assessed to income tax, with returns of income regularly filed and the sources of incomes clearly indicated in the form of agricultural income and interest from firm etc. in case of Mrs. Hemalatha, an extra source of income in the form of loan obtained and realisation of debtors were indicated, where the income in the form of interest were shown in the return of income, on regular basis. Leaving all these details, it appears that the AO has arrived at the conclusion that the credit worthiness of the parties are not established. Based on the information brought on record, identity of all the partners are established, with clear sources for investments indicated in returns of income filed by them except in the case of Sri. S. Ravinder Rao, where neither income-tax assessment details nor the information to indicate that he really derived agricultural income to the extent of Rs. 3,00,000 during the year under*

reference, were furnished, to prove the required creditworthiness, as enumerated in provisions of Sec. 68 of the Income-tax Act. Sri. Arun Kumar, Sri Pradeep Kumar and Mrs. Hemalatha are assessed to tax and in case their creditworthiness was not proved, it was open for the AO to proceed against them for enquiring and making additions in their respective hands. Thus, based on the information brought on record, I am of the considered opinion that there is no required basis to treat the amounts brought in as capital by Sri., Arun Kumar (Rs. 5,00,000), Sri. Pradeep Kumar (Rs.5,00,000) and Mrs. Hemalatha (Rs. 10,00,000), totalling Rs. 20,00,000, since the said entities are capable of explaining the investments independently. However, in case of Mr. Ravinder Rao, the Sources indicated for investment of Rs. 3,00,000 which is mostly by agricultural incomes, without any relevant information except the land holding details, and being not assessed to tax, stand on a different and doubtful platform. Mr. Ravinder Rao, whose identity though not in doubt, the credit worthiness is not fully established and is incapable of explaining the said investments of Rs. 3,00,000 brought into the books of account of the firm as capital, through his established Sources. Hence, the said amount is considered to come under the ambit of provisions of Sec. 68 of the Income-tax Act. Accordingly, as against the amount of Rs. 23,00,000/- treated as unexplained credits, the addition to the extent of Rs. 3,00,000/- is sustained and assessee gets relief of Rs. 20,00,000/-. This ground of appeal is treated as partly allowed."

6. Before us, ld. DR submitted that assessee has not submitted any information before the AO, but, filed the information before the CIT(A) and the CIT(A) should have given opportunity to AO before giving benefit to the assessee. He submitted that this issue may be remitted back to the file of the AO for verification.

7. Ld. AR, on the other hand, submitted that all the additions made by the AO are nothing but capital introduced by the respective partners in the business. He submitted that assessee has submitted relevant return of income, confirmation and PAN details before the CIT(A) and the CIT(A) has accepted the identity, creditworthiness and genuineness of the transactions, except in the case of Sri Ravinder Rao, in which Shri Ravinder Rao is not a regular income-tax assessee. Whereas, he holds 17 acres of land and he earns

agricultural income. At the same time, he also filed confirmation letter before the AO, which is placed on record at pages 38 & 39 of the paper book. He submitted that Shri Ravinder Rao is holding substantinal land out of which he has earned Rs. 3 lakhs, which is within his capacity to earn such income. In these circumstances, it proves that it is a genuine source of income. He submitted that AO and CIT(A) has not expressed their doubt on the ownership of land. He submitted that introduction of Rs. 3 lakhs as capital in the company be allowed as genuine capital.

8. Considered the rival submissions and perused the material on record. Assessee has filed confirmation letters from the partners, viz., Shri Arun Kumar, Shri Ravinder Rao, Shri Pradeep Kumar and Smt. Hemaltha. Out of the four partners, CIT(A) verified the confirmation letters, income-tax returns of Shri Arun Kumar, Shri Pradeep Kumar and Smt. Hemaltha and accordingly, he accepted the genuineness and creditworthiness of these three partners and deleted the additions. Whereas in the case of Shri Ravinder Rao, CIT(A) did not accept the genuineness, mainly, due to the fact that he has not a regular income tax assessee. Whereas on record, it is shown that he holds 17 acres of land and it was not doubted that he holds such land. Since he is holding such quantity of land, it is possible that he must have earned much more than Rs. 3 lakhs out of such agricultural land. By considering the benefit of doubt and there is possibility of earning agricultural income much more than the capital introduced in the company, therefore, we allow the claim of the assessee and grounds raised by the assessee are allowed and ground raised by the department is dismissed.

9. Coming to the ground No. 3 of the revenue and Ground Nos. 7 & 8 of the assessee, the facts relating to these grounds are as under:

The assessee has claimed the following expenditure:

1. Purchase of Cement	Rs. 21,27,610
2. Crusher labour charges	Rs. 51,730
3. Purchase of iron and steel	Rs. 9,97,690
4. Labour charges	Rs. 28,80,660
5. Quarry Labour charges	Rs. 4,34,910
6. Repairs and machinery	Rs. 1,15,400
Total	Rs. 66,08,000

9.1 In respect of purchase of cement, the AO had called for the bills/invoices in respect of cash payments below Rs. 20,000. The assessee had produced the bills from certain parties however, the AO doubted their authenticity. The AO further observed that in the month of March, cash purchases have increased and opined that it was a deliberate attempt on the part of the assessee to inflate the expenditure in the books of account. Hence disallowed 20% of the expenditure incurred on purchase of sale amounting to Rs. 21,27,610/-.

9.2 In respect of 'crusher labour charges', the AO observed from ledger that payments of Rs. 250 each have been recorded on several occasions and no vouchers could be produced by the assessee in support of the expenditure claimed. Hence, the AO doubting the genuineness of the claim, had disallowed 5% of such expenditure which amounting to Rs. 51,730/-.

9.3 The assessee in respect of 'purchase of iron and steel' had debited an amount of Rs. 49,88,447/- in the Profit & Loss A/c and on verification of the Ledger, the AO observed that there are cash payments varying from Rs. 18,000 to Rs. 20,000. Doubting the veracity of the bills/vouchers produced the AO had disallowed 20% of such expenditure which amounted to Rs. 9,97,690/-.

9.4 The AO had disallowed 5% of the 'labour charges' debited to the Profit & Loss A/c as no vouchers were produced and as a number of entries have been recorded towards payments of Rs. 300/-. The disallowance @5% on Rs. 5,76,13,219/- worked out to Rs. 28,80,660/-.

9.5 On similar lines of labour charges, the AO disallowed 5% of 'quarry labour charges' debited to the Profit & Loss A/c. of Rs. 86,98,200/- which worked out to Rs. 4,34,910/-.

9.6 The assessee had debited an amount of Rs. 3,25,450/- towards 'repairs and machinery'. It was observed by the AO from the ledger that the assessee had debited the name of Dashrad Electricals with an amount of Rs.1, 15,400/- but the corresponding bill/invoice was not produced. Hence, the AO disallowed the sum of Rs. 1, 15,400/-and added back to the income returned.

10. Aggrieved, assessee filed appeal before the CIT(A) and after considering the submissions of the assessee as well as the findings of the AO, the CIT(A) observed as under:

> *"11.3 Perused the observations of the AO and the submissions of the assessee on each of the items of disallowance. As it had been noticed, the AO disallowed the various items of expenses for services such as 'labour charges', 'quarry labour charges' and 'crusher labour charges', at the rate of 5% of expenses debited under the said heads, on the reason that vouchers were not produced and genuineness of expenses is doubtful. Similarly, the expenses towards purchases such as 'purchase of steel', 'purchase of cement', the expenditures were disallowed at 20% holding that purchase bills from certain traders are serially numbered. Further, expenditure under the head 'repairs and machinery', disallowance was made, holding that bills were not produced, for a specific amounts of purchase.*
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> *11.3.1 As could be seen from the observations of the AO, the disallowances under various heads of expenses as indicated, were made on the expenses/purchases,- where the payments were made in cash, not exceeding Rs. 20,000. This means, where there are technical omissions/commissions committed by*

assessee, disallowances were made, by applying the relevant provisions without looking at the 'practicability angle' of the business, and by relying on the books of account. Whereas in the cases of expenses met by cash payments of Rs. 20,000 and below, disallowances were made at various rates, without relying on the books, but without rejecting the books, thereby resulting in high pitched additions, as claimed by the assessee. Regarding the disallowance of various heads of expenses, it may be observed that disallowances were made by surmises and sampled observations. Under few heads such as labour charges etc. disallowances were made by simple reason that vouchers were not produced and without putting the same to the assessee, for the response or explanation. There is no concrete basis for such disallowances, where books are relied by the AG. Hence, the disallowances, made without proper enquiries or evidences, and on the conclusion that the expenses incurred are not genuine, are not sustainable, more so, where the books of account were not rejected. Under the circumstances, i have no hesitation in holding adhoc additions made, while holding that books of account to be reliable, are not sustainable. "

10. Further, the assessee filed written submissions as regards ground Nos. 7 & 8 before the CIT(A) wherein it was stated as under:

"11.4 In addition to the above submissions, the assessee had further made written submissions as under:

"The Assessee is herewith submitting the Comparative Statement of Expenditure for your kind consideration. A perusal of statement shows that there was no considerable increase under any head of expenditure except in respect of labor. In this connection, it is submitted that the labour charges has increased by 11.35% over the preceding year. This is because the increase in labour charges per day per person. The labour charges per day per person in the year 2008-09 was 200/- and where as it was increased to 300/- per day per person for the year 2009-10, the year under consideration. It is evident from the above that cost per labour is increased by 50% whereas the total cost to the firm increased by just 11%. Hence the expenditure debited by the Assessee is more reasonable and the Assessee is having the voucher for every payment. Even in the crusher labor charges, the labor charges per day per person has increased by 50%. Hence the addition made by the A. a in respect of labour and Crusher labor may be deleted.

In respect of Metal chips and Sand, Salaries, Bitumine, Signarage, Blasting material purchases, Telephone, Tyres, Vehicle repairs, Vehicle Insurance and taxes, Mess Charges, Rent, VAT, NAC, Bank Guarantee Commission, Purchase of

Spares Engine Oils the expenditure incurred is. lesser than by 3.57%, 0.25%, 2.3%, 0.47%, 1.77%, 0.03%, 1.23%, 0.03%, .44%, o.18%, 0.07% 1.09%, 0.10%, 0.24%, 4.84% and 0.02% respectively over the preceding year.

Moreover no interest was claimed in the earlier year. The Interest on partners capital was debited to the profit and loss account in the year under consideration. The Net profit shown for the year under consideration is 6.08% on net turnover where as it was 8.29% in the preceding previous year. The variation is due to increase in Interest on partners capital and increase in labor charges per head. It is further submitted that the assessee claimed the expenditure and variations are more reasonable in the inflationary situation. We have taken a plea before the Additional commissioner even to adopt 8% on net profit as was held by the CIT(A)-V, Hyd in our own case for the immediately preceding Asst. Year 2009-10. The same is being reproduced for your kind consideration.

To buy peace of mind, to obviate unnecessary litigation and with a view to co-operate with the department, we request that its income may be computed by applying a net profit rate of 8% after allowing Subcontracts, materials supplied, deductions such as Seignarage, Labour cess, VAT etc., depreciation, Interest on capitals and partners salaries.

The Assessee further submit that there is no margin derived from to Subcontract works assigned. The Sub contract agreements were also submitted before you for verification. It is also submitted that in the earlier Asst. year 2009-10, the A.O assessed profit @ 2% on the Sub Contracts and the same was felt reasonable by the CIT(A). Hence it is prayed that disallowance of entire subcontract expenditure by the AO not justifiable.

The A.O made adhoc additions as percentage basis in respect of some expenditure. In respect of cement, the A.O disallowed 20% of expenditure. In the year 2007-08, it is 4.49% of net contracts and where as it is 2.34% of net contracts. The expenditure for the Year under consideration is 3.81 % of net contracts. This is lesser than the preceding previous year and more than the previous year. Incurring of expenditure under the different heads may vary with the contract executed and cost of the cement in a particular period. There is no rationale in disallowing 20% of expenditure under this head. Hence, the assessee hereby request the CIT (A) to delete the addition made under this head.

In respect of the head Iron and Steel, the A. O. made addition of 20% of. expenditure incurred. In this also, there is no rationale in making addition. Hence, the assessee is hereby requested the CIT(A) to delete the entire disallowance made on adhoc basis as the expenditure incurred is very reasonable and very near to the earlier figures.

In view of the above and clarification given in earlier hearing, the CIT(A) is requested to delete the total additions made in respect of 1. Introduction of capital, 2. Unexplained cash credits, 3. Disallowance u/s 40A(3), 4. disallowance on account of miss match of 26AS, 5. Disallowance on account of Sub contract payments and 6. Disallowance of expenditure made on adhoc basis.

Inspite of the above, the assessee requested the Commissioner of Appeal-VI to dispose the case by adopting the 8% on net turnover after allowing admissible deductions as the assessment is high pitch assessment.

10.1. After considering the submissions of the assessee, the CIT(A) observed as under:

"12.0 In this context it is relevant to refer to the background of the business, and the additions made on various counts without rejecting the books of account. The assessee is a civil contractor, and the gross receipts for the AY 2008-09, 2009-10, 2010-11 are shown at Rs. 28.89 crores, Rs. 32.13 crores and Rs. 38.48 crores respectively, (which includes the sub contract receipts) for the AY 20010-11. The net profits shown stood at Rs. 1.44 crores, Rs. 1.92 crores and Rs. 1.69 crores for the AYs 2008-09, 2009-10 and 2010-11 respectively. Comparison of expenses, head wise, also do not reveal any abnormal variations, except under the head 'labour charges'. As indicated, apart from disallowing certain expenses on technical grounds, the AO also disallowed certain expenses, on estimation basis. This resulted in addition, wherein the assessed income stood at Rs. 14,80,41,310/- as against the returned income of Rs. 1,69,88,690/-, resulting in an abnormal profit ratio of more than 38% which might not be possible in any business of civil contracts. Indeed, there are certain expenses, which have become disallowable, such as the sub contract works paid to Mr. Raghava Rao, who did not submit bills as on date of completion of scrutiny proceedings, repairs and machinery, for which no bills were produced, and certain expenses were also disallowable, where procedure was not followed, such as bills for diesel purchases, where no details of lorry numbers were indicated and in other instances certain expenses were paid in cash exceeding the limits prescribed,

such as sand purchases etc. Further, disallowances were made, on the plain application of the provisions, without looking at the angle of practicability of business or the exceptions provided in the provisions, concerned. For all these reasons the books are liable to be rejected for their non reliance, for explaining the veracity of certain expenses claimed.

12.1 In this context it may be relevant to mention here that the assessee made an alternate plea at the stage of assessment proceedings, to estimate the net profit at 8%, on the net contract receipts, after deducting, seionerage charges and depreciation and interest on capital of partners etc., which was rejected by the AO mainly for following reasons:

i) The decision to reject the books lies with the AO, and the assessee cannot request for rejection of own books of account which are duly accounted.

ii) The percentage of estimated profit requested by assessee at 80/0, is very low on facts of the case, specially in light of huge disallowances made u/s. 40A(3) of the IT Act, and rate of profits in estimation cases, depends on facts of each case, and in case of assessee estimation was requested on face of huge additions made.

iii)Since, some of the additions such as cash credits made u/s. 68 and the disallowances of payments to sub contractors, were made based on books of account, books could not be rejected.

12.2 In this context, it may be relevant to mention that, disallowances of payments to sub contractors were made disregarding the books of accounts, though such amounts were paid through banks and guided by contract agreements, and explainable through books of account. It is also a fact that substantial disallowances were made under various heads, rejecting the books. It is also relevant to refer to the fact that there is no substantial variations in expenses under various heads, except under the head labour charges. However, it is a fact that certain expenses are not verifiable with the help of bills, as indicated in assessment order. It is also a fact that for similar reasons, the AO has estimated the net profit for the AY 2009-10, in assessee's own case, against which the CIT(Appeals)-V has upheld estimation, albeit with a modified rate of profits, while allowing the payments u/s. 40(b) and depreciation. With the facts remaining same for the year under reference, and for the reasons of lapses pointed out by the AO in the assessment order, I am of the considered opinion that it is a fit case for estimation of profits of business of contracts, as against various disallowances and additions made in

assessment order separately, without rejecting the books. It is also a fact that the estimation was not acceptable to the AO, for the reason that the rate of net profit offered by the assessee at 8% appeared too low. Hence, the estimation of profits of the business by rejection of books is liable to be applied in this case, based on facts. of However, the additions u/s. 68 of IT Act, may remain untouched, since the same have been made on different ground.

12.3 In cases of estimation, the rate of profit may be determined by the facts of each case, as declared by catena of judicial decisions and such estimated rates are in the rage of 8 to 12.5% in main contracts and 5% in sub contracts, on the net contract receipts, excluding the recoveries and seionerage charges. The net profit adopted is also subject to the allowance of claims of interest and remuneration charges paid/payable to the partners of the firm apart from depreciation. These observations are based on the relevant judicial decisions in this regard. In the instant case, based on the aforesaid observations and facts of the case, estimation of profits on business receipts is justified and it may be reasonable to adopt the net profit @10% on main contracts and 5% on sub contract receipts by the assessee. Thus, based on the facts of the case, and in light of the above observations, the AO is directed to recompute the profit of the assessee firm by estimating the net profit at 10% on net main contract receipts and at 5% on net sub contract receipts. Further the unaccounted contract receipts, from EE NH Division, Warangal (Rs. 10,98,698) and AMRP Division, Nalgonda (Rs.13,86,496) may be taken into consideration for quantifying the main contract receipts. It may be relevant to observe that the main net contract receipts after recoveries/deductions of Rs. 31,55,42,763/-, now stand increased by Rs. 24,85,194/- (10,98,698 + 13,86,496). Similarly, the net sub contract receipts after government deductions stand at Rs.3,93,88,283/-The AO is directed to recompute the profits on such receipts at the respective rates of net profit of 10% and 5%, and the deductions u/s 40(b) of IT Act may be allowed."

Aggrieved, assessee and revenue are in appeal before us.

11. Ld. AR submitted that the assessee has declared profit @ 4.5% in its P&L A/c. He justified the estimation of the profit by the CIT(A) but made a plea that it should be reduced to 8% instead of 10%.

12. Ld. DR submitted that AO has not rejected the books and ld. CIT(A) cannot reject the same and not justified in estimating the income and relied on the order of AO.

13. Considered the rival submissions and perused the material on record. We have noticed that ld. CIT(A) has discussed elaborately about the reason for rejection of books. According to us, proceedings before the CIT(A) is the extension of assessment and he had elaborately discussed and has proper reasons to reject the books considering the fact that the assessment was done with high-pitch addition. Ld. CIT(A) was right that there are catena of decisions confirming estimation of income between 12.5% to 8% depending upon the nature of contract. But, recently the Hyderabad Benches held in numerous cases relating to Civil Contractors, for main contract 8% and sub-contracting 5%. By following similar pattern, we also direct the AO to estimate the same at 8%. Accordingly, ground raised by the revenue is dismissed and assessee's grounds are partly allowed.

14. As regards the addition of Rs. 26,50,000/- as unexplained cash credit u/s 68 of the Act, the assessee had shown the unsecured loans in the balance sheet from the following persons:

1. Ms. G. Ramya	Rs. 5,00,000
2. Sri M. Butchaiah	Rs. 7,00,000
3. Sri M. Seshaiah	Rs. 4,50,000
4. Sri N. Koteswara Rao	Rs. 5,00,000
5. Sri P. Prasada Rao	Rs. 5,00,000
Total	Rs.26,50,000
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14.1 In case of Ms. Ramya, the AO doubted the creditworthiness and on the basis of difference in dates of advance of the amounts, as per the statement recorded u/s 131 and books of account of the assessee, rejected the explanation of the assessee and treated the same as unexplained cash credit u/s 68.

14.2 In case of Sri M. Butchaiah, the AO opined that since the information u/s 133(6) was not filed directly by Sri M. Butchaiah, his identity, creditworthiness and sources were not proved, hence, treated the advance amount of Rs. 7,00,000/- as unexplained cash credit u/s 68.

14.3 In respect of the rest of unsecured loans of Rs. 4,50,000/- from Sri M. Seshaiah, Rs. 5,00,000/- from Sri N. Koteswara Rao and Rs. 5,00,000/- from Sri P. Prasada Rao, the assessee was asked to give the addresses along with their confirmation and sources of income to prove their identity and creditworthiness. Since, the addresses or confirmation of these parties was not produced to substantiate the claim made by the assessee and that whether these parties had actually made any payment to Indian Oil Corporation, Vijayawada was also not verifiable, the AO treated the said amounts totaling to Rs. 14,50,000/- as unexplained cash credits.

15. After considering the submissions of the assessee, the CIT(A) deleted the addition in case of Ramya of Rs. 5,00,000/- and in case of other creditors, the CIT(A) upheld the action of the AO by holding that the assessee failed to prove genuineness of transactions, and creditworthiness of creditors.

16. Aggrieved, the assessee is in appeals before us.

17. Ld. AR submitted that in the case of Shri M. Butchaiah, he has deposited the cash in his son's account and made the payment by cheque. AO cannot ask for source of source. With regard to other creditors, he submitted that these payments were made to IOC on behalf of assessee. It should be treated as turnover.

18. Ld. DR relied on the findings of AO and CIT(A).

19. Considered the rival submissions and perused the material on record. With regard to loan from Shri M. Butchaiah, he has filed confirmation letter and made the payment through banking channel.

We have noticed that only confirmation letter was filed in the paper book. It does not have any PAN or any other information relating to the contractor/creditor. In the absence of such details, we are not in a position to accept the same as genuine or it proves anyway the creditworthiness of the creditor. With regard to other creditors, they claim that the payments were made directly to IOC on behalf of the assessee. Since, the payment was made to Govt. establishment, we are constrained to remit this back to the file of the AO to verify the relevant documents in support of such payment. In case it is found that these payments were made to IOC and the supply was made in the name of assessee, it may be treated as turnover, instead of addition u/s 68 of the Act.

20. As regards the addition on account of reconciliation of 26AS statement with turnover of Rs. 1,83,31,891/-, the AO observed that there was difference in turnovers reflected in the profit & loss account with the receipts as per 26AS statement in respect of the following:

Name of the deductor	As per 26AS statement	As per P&L account	Difference
M/s APR Constructions	4,86,82,264/-	4,27,10,896/-	59,71,368/-
M/s Madhucon Projects Ltd.	65,83,577/-	-	65,83,577/-
Executive Engineer, AMRP Division, Nalgonda,	13,86,494/-	-	13,86,494/-
Superintending Engineer	1,09,54,903/-	-	1,09,54,903/-
Andhra Bank	19,126/-	-	19,126/-

After considering the submissions of the assessee, the AO brought to tax the total amount of Rs. 1,83,31,891/-.

21. The CIT(A) after considering the submissions of the assessee as well as the findings of the AO, inter-alia, held as under:

" However, the entire amounts of such contract receipts cannot be treated as profit of the assessee as per the judicial decisions. Decision of Calcutta High Court in the case of CIT Vs. Nivedan Vanijya Niyojan Ltd. (263 ITR 623) and decision of Gujarat High Court in the case of CIT Vs. Gurubachan Singh J. Juneja (302 ITR 63), support the said view. Under the circumstances, i am of the considered opinion that there is no justification for bringing the entire amounts being the difference between the Profit & Loss account and the 26AS statement, to the extent of Rs. 1,83,12,765/- from the three parties, to tax. In stead, the amounts of Rs. 24,85,194 (Rs.1098968 + 13,86,496) represent the unaccounted contract receipts for the assessee, for the year under reference, on which the net profit is required to be estimated. As regard to the interest amount of Rs. 19,126/-, being interest from Andhra Bank, which shown to have been offered for tax in earlier year, there is no justification for the addition, without bringing the needed information on record. Under the circumstances, the addition of Rs. 1,83,31,891/-, made on the basis of reconciliation of 26AS statement, treating the gross contract receipts as unexplained income, is not sustainable. Instead, the AO is directed to estimate the net profit on the amounts of Rs. 24,85,194/-, which has been quantified as unaccounted contract receipts, at a rate as applicable, in case of estimation of profits of business."

22. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

23. Considered the rival submissions and perused the material on record. We have noticed that in the case of NH Division, Warangal, they have uploaded Form 26AS at Rs. 109,54,503/- whereas they actually remitted Rs. 98,56,205/-. Assessee has recorded only Rs. 98,56,205/- in its books of account, which was also confirmed by the NH Division. Since, the difference is exactly 10%, it could be due to TDS deduction. In the absence of any confirmation, we are inclined to accept the findings of CIT(A). With regard to AMRP Division, Nalgonda, assessee has failed to record the same in its books of account. Therefore, we are in agreement with the findings of CIT(A). Therefore, the ground raised by the assessee is dismissed.

26. As regards the disallowance of interest on TDS of Rs. 2,66,105/-, the assessee debited interest on TDS of Rs. 2,66,105/- in the P&L A/c, which the AO added back as it is not an allowable

expenditure. The CIT(A) confirmed the said disallowance by observing that assessee neither made submissions nor pressed this ground of appeal.

27. Aggrieved by the action of the CIT(A), the assessee is in appeal before us.

28. Considered the rival submissions and perused the material on record. Assessee has debited interest on TDS and the same was disallowed by AO. Before CIT(A), assessee has not pressed or contested. Assessee has raised separate ground before us. Since interest on TDS is allowable expenditure as it is not the penal interest charged on the tax. It is only a compensatory in nature of late remittance of TDS. Therefore, AO may allow this expenditure after verification whether the interest belongs to delay in remittance of TDS. Accordingly, ground raised by the assessee is allowed for statistical purposes.

29. In the result, appeal of the revenue is dismissed and appeal of the assessee is partly allowed.

Pronounced in the open court on 24th January, 2018.

Sd/-	**Sd/-**
(P. MADHAVI DEVI)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 24th January, 2018

kv

Copy to:-

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3) *CIT(A) – VI, Hyd.*
4) *CIT – 6, Hyd.*
5) *The Departmental Representative, I.T.A.T., Hyderabad.*
6) Guard File