

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.219/Viz/2017  
(निर्धारण वर्ष/Assessment Year:2009-10)**

Vatram Venkateswara Rao  
D.No.3-105/1, Ambica Nagar  
Near Ambica Devi Temple  
6<sup>th</sup> Lane, Satrampadu  
Eluru - 534007

Vs. Income Tax Officer  
Ward-2  
Eluru

**[PAN :ABIPV7249K]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Shri Ravi Shankar Narayan,  
DR

सुनवाई की तारीख / Date of Hearing

: 02.05.2018

घोषणा की तारीख/Date of Pronouncement

: 09.05.2018

**आदेश /ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal is filed by the assessee against the order of the Commissioner of Income-Tax (Appeals) [CIT(A)]-2, Guntur vide ITA No.113/2011-12 dated 31.01.2017 for the assessment year 2009-10.

2. All the grounds of appeal are related to the estimation of income. The assessee is engaged in civil contracts. For the impugned assessment year, the assessee received gross receipts of Rs.1,93,31,395/- and filed the return of income declaring total income of Rs.2,51,144/-. The assessing officer (AO) has taken up the case for scrutiny. During the assessment proceedings, the assessee has produced books of accounts, but could not produce the bills and vouchers stating that the same were not readily available. Therefore, the AO completed the assessment estimating the income @ 9% of gross receipts clear of all expenses and depreciation and resultant difference of Rs.13,88,683/- was added to the returned income.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the rejection of books of accounts. However, the Ld.CIT(A) compared the expenditure for the assessment years 2008-09 and 2009-10 and directed the AO to disallow the expenditure in proportionate to the turnover in respect of materials and labour charges and wages.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, Ld.AR argued that the assessee is a civil contractor and during the assessment, the assessee did not produce the bills and vouchers since they were not readily available. The Ld.CIT(A) has decided the appeal directing the AO to allow the expenditure in proportionate to the turnover in the immediately preceding assessment year. The Ld.AR argued that the estimation of resultant income works out to 7.21% which is very high in this line of business and in the assessee's case the profit was only as declared in the return of income. Disallowance of expenditure as held by the Ld.CIT(A) would cause lot of financial injury to the assessee, since it was very high. The Ld.AR further submitted that since the AO has rejected the books of accounts, it is a case for reasonable estimation of income. For a query from the Bench, the Ld.AR submitted that the estimation of income @ 5% is reasonable in this line of business.

5. On the other hand, the Ld.DR submitted that the AO has estimated the income @9% clear of depreciation and all other expenses since the assessee failed to produce the books of accounts, bills and vouchers etc. Therefore, argued that the income estimated by the AO is fairly reasonable.

Further, the Ld.CIT(A) has ordered the AO to disallow the expenses under the head 'material and labour expenses' in proportion to the turnover. The Ld.CIT(A) is very fair in directing the AO to restrict the disallowance to 'material and labour expenses'. Therefore, argued that no interference is called for in the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material on record. In this case, though the assessee has produced the books of accounts, but failed to produce vouchers, bills etc. Therefore, we uphold the action of the AO in rejecting the books of accounts. The Ld.CIT(A) though accepted the rejection of books of accounts directed the AO to disallow the expenses in respect of materials and labour charges and wages in proportion to the turnover compared to the earlier assessment year. However, the Ld.CIT(A) has not considered the increase in expenditure due to inflation. The correct procedure is once the books of accounts are rejected, the AO has to resort for estimation of income which would take care of all other relevant expenses. Therefore, we are of the view that the estimation of income @ 6% of gross receipts, clear of depreciation and all other expenses is fair and reasonable in this case. Accordingly, we set aside the orders of the lower authorities and direct the AO to estimate the income @ 6% of the gross

receipts clear of all expenses and depreciation. The appeal of the assessee is partly allowed.

7. In the result, appeal of the assessee is partly allowed.

The above order was pronounced in the open court on 9<sup>th</sup> May, 2018.

<p>Sd/-  <b>(वी.दुर्गा राव)</b>  <b>(V. DURGA RAO)</b>  <b>न्यायिक सदस्य/JUDICIAL MEMBER</b>          विशाखापटणम /Visakhapatnam          दिनांक /Dated : 09.05.2018          L.Rama, SPS</p>	<p>Sd/-  <b>(डि.एस. सुन्दर सिंह)</b>  <b>(D.S. SUNDER SINGH)</b>  <b>लेखा सदस्य/ACCOUNTANT MEMBER</b></p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant- Vatram Venkateswara Rao, D.No.3-105/1, Ambica Nagar, Near Ambica Devi Temple, 6<sup>th</sup> Lane, Satrampadu, Eluru - 534007
2. प्रत्यार्थी / Income Tax Officer, Ward-2, Eluru
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income-Tax(Appeals)-2, Guntur, Camp : Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- .6गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
 ITAT, VISAKHAPATNAM