

आयकर अपीलिय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM
ITA No.194/CTK/2017

(निर्धारण वर्ष / Assessment Year :2012-2013)

M/s Gorakhnath Construction Pvt. Ltd. E-42, Koel Nagar, Rourkela	Vs.	ACIT, Rourkela Circle, Rourkela
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCG 4382 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

ITA No.171/CTK/2017

(निर्धारण वर्ष / Assessment Year :2012-2013)

ACIT, Rourkela Circle, Rourkela	Vs.	M/s Gorakhnath Construction Pvt. Ltd. E-42, Koel Nagar, Rourkela
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCG 4382 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.R.Mohanty, AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR
सुनवाई की तारीख / Date of Hearing : **01/03/2018**
घोषणा की तारीख/Date of Pronouncement **07/03/2018**

आदेश / O R D E R

Per Shri N.S.Saini, AM:

These are the cross appeals filed by the assessee and Revenue against the order of the CIT(A), Sambalpur, both dated 18.01.2017.

2. In appeal of assessee (i.e. ITA No.194/CTK/2017) the sole issue involved is that the CIT(A) erred in confirming the order of the AO in rejecting the books of accounts on sheer surmises and suspicion and estimation of income @7%.

3. In ground No.1 of appeal of Revenue (i.e. ITA No.171/CTK/2017), the grievance of the Revenue is that the CIT(A) erred in estimating the net

profit @7% of gross contract receipt instead of 8% of gross contract receipts estimated by the AO.

4. Brief facts of the case are that the AO found from the P&L account that the assessee had shown gross receipt of Rs.16,56,86,477/-. The accounts revealed that against contract receipts of Rs.5,04,92,979/- from M/s. BOC India Ltd. as per 26AS statement, the assessee had shown the receipts at Rs.4,90,22,225/- resulting in a difference of Rs. 14,70,654/-. The assessee could not reconcile the said difference. The assessee failed to furnish the details of the creditors and bills & vouchers in support of expenses in spite of specifically asked to do so. The AO observed that most of the payments made to various subcontractors were in cash and the genuineness of the payment was not verifiable. The AO further observed that during the course of survey conducted u/s.133A of the Act in the premises of the assessee on 25.3.2011, the assessee agreed to offer an amount of Rs.81,00,000/- as additional income representing unverifiable creditors. For the said reasons, the AO rejected the book results u/s.145(3) of the Act and estimated the net profit @8% of the gross receipts.

5. On appeal, the CIT(A) held that the assessee's contention is that its book results should not have been rejected by the AO since books of account have been properly maintained and subjected to audit u/s.44AB of the Act. The assessee also argued that its books of account have never been rejected in the past and the income disclosed as per accounts has always been accepted by the Department even in scrutiny for some of the years including the preceding AY 2009-10 and subsequent AYs 2012-13 & 2013-14. During the course of

appeal hearing, books of account have been produced for examination and have been test checked. After carefully considering the facts of the case, the CIT(A) was of the view that since all the bills & vouchers in support of the expenses were not furnished either before the AO or before the him and the details of the creditors were not filed, the AO was justified in rejecting the books result and resorting to estimation of net profit. However, the estimation made by the AO at 8% does not appear to have any basis. He has neither given a comparable case to justify the rate of estimation of net profit nor compared the profit disclosed by the assessee for earlier years before forming the opinion that the net profit could reasonably be estimated at 8% of the gross receipts. Going by the rate of profit disclosed by the assessee from year to year, the CIT(A) was of the considered view that estimation of net profit at 7% would meet the ends of justice. Accordingly, he directed the AO to estimate the net profit at 7% of the gross receipts.

6. Being aggrieved by this order, the assessee and the Revenue are in appeals before us.

7. The AR of the assessee argued that as will be observed from the order of CIT(A) page 7 para 2.2 that during the course of appeal hearing the books of account were produced for examination and were test checked by the CIT(A). Thereafter the CIT(A) has stated that all the bills & vouchers in support of the expenses were not furnished either before the AO or before him. The AR submitted that this is a vague statement made by the CIT(A) in his order. The CIT(A) has not pointed out which of the vouchers for which of the expenses could not be produced by the assessee. Without doing so, the CIT(A) does not derive authority to reject the books of accounts of the assessee and resort to estimation of income of the assessee, hence, he prayed that the order

of the CIT(A) should be set aside and the returned income of the assessee should be accepted. He argued that it will be observed from the order of CIT(A) that the assessee had filed year-wise gross turnover, net profit and percentage of profit and also stated in the chart that the same was accepted either u/s.143(3) or u/s.143(1) of the Act. He argued that in the year under appeal net profit shown at 6.10% and in the immediately preceding assessment year 2009-2010 it was 6.24% and in the immediately succeeding assessment year 2011-2012 it was 6.12%. Thus, the results of the current year favourably compared with the past year and subsequent year accepted by the department. Therefore, there was no reason to reject the book results of the assessee in the year under appeal and estimate the income of assessee at a higher percentage rate of 7%.

8. The DR, on the other hand, supported the order of CIT(A).

9. We have heard rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts of the case are that the AO pointed out that the contract receipts shown from M/s. BOC India Ltd. as per 26AS statement was Rs.5,04,92,979/-, whereas the assessee has shown contract receipts at Rs.4,90,22,225/- and, thus, there was a difference of Rs.14,70,654/-. He further observed that the assessee failed to furnish the details of the creditors and bills & vouchers in support of expenses and that the payments made to sub-contractors were in cash and that in a survey u/s.133A of the Act on 25.03.2011, the assessee agreed to offer an amount of Rs.81,00,000/- as additional income representing unverifiable creditors. Therefore, for these reasons, he rejected the books of accounts u/s.145(3) of the Act and estimated the net profit @8% of the gross receipts.

10. On appeal, before the CIT(A) the assessee produced bills and vouchers as stated by the CIT(A) in his order at page 7 para 2.2 and the same were verified by him. Thereafter the CIT(A) observed that since all the bills & vouchers in support of the expenses were not furnished and details of creditors were not filed, therefore, the books results were rightly rejected by the AO. The contention of AR of the assessee is that he personally appeared before the CIT(A) and produced the books of accounts and all bills vouchers and necessary details as required by the CIT(A) and was checked by him. Thereafter the CIT(A) has not asked him to produce any other further details. The CIT(A) in his order has mentioned that all the bills & vouchers in support of the expenses were not furnished either before the AO or before him, however, the CIT(A) has not pointed out which of the vouchers for which of the expenses could not be produced by the assessee. The observation of the CIT(A) in his order is vague and, therefore, he was not justified in rejecting the book results of the assessee and estimating the income of the assessee at 7% of the gross contracts receipts. He further submitted that it will be observed from page 4 of the CIT(A)'s order that the assessee has furnished chart giving details of his turnover, net profit and percentage of profit from assessment years 2006-2007 to 2013-2014. He submitted that it will be seen that in the year under appeal the assessee has shown net profit of 6.10% and 6.24% in the immediately preceding assessment year 2009-2010 and 6.12% in the immediately succeeding assessment year 2011-2012 and the same was accepted in an assessment u/s.143(3) and 143(1) of the Act, respectively. Since the book results of the year under appeal is in compare with the results of the preceding and succeeding assessment years, the CIT(A) was not justified in rejecting the book results of the assessee and in estimating the net profit at a higher

percentage of 7%. Therefore, he prayed that book results of the assessee for the year under appeal should be accepted.

11. On the other hand, the DR could not controvert the submission of the AR of the assessee.

12. In the above facts and circumstances of the case, we are of the considered view that the book results of the assessee was rejected by the AO on the ground that bills and vouchers for expenses and details of sundry creditors were not produced before the AO. Further the AO has mentioned that during survey conducted u/s.133A of the Act on 25.03.2011, the assessee was agreed to offer Rs.80 lakhs on account of unverifiable creditors as income which was not shown. The AR of the assessee during the course of hearing could not controvert the said finding of AO. Further the AO has also stated that there was difference in Form 26AS with regard to receipt from M/s BOC India Ltd, which was Rs.5,04,92,979/- and the assessee has shown the same at Rs.4,90,22,225/- and the difference of Rs.14,70,654/- could not be reconciled. The AR of the assessee could not offer any explanation or reconciliation for this amount. Therefore, rejection of book results by the AO in the facts and circumstances of the case was fully justified.

13. We find that the assessee has filed a chart before the CIT(A) which shows the assessee has shown profit of 7.02% in the assessment year 2012-2013 on turnover of Rs.16.83 crores and that the turnover in the year under appeal is Rs.16.56 crores which is more or less comparable. Therefore, we do not find any error in the order of CIT(A) in estimating the income of the assessee by applying rate of 7%. Therefore, the order of CIT(A) is confirmed and the ground of appeal of the assessee and Revenue is dismissed.

14. In Revenue's appeal for the assessment year 2010-2011, ground No.2 is directed against the order of CIT(A) in deleting the addition made by the AO towards 'interest on FDRs' of Rs.22,35,872/- under the head 'income from other sources'.

15. Brief facts of the case are that the AO assessed Rs.22,35,872/- as interest earned on fixed deposits under the head 'income from other sources'.

16. Before the CIT(A) the assessee argued that addition of Rs.22,35,872/- to the total income towards interest earned from fixed deposit assessed as income from other sources deserves to be deleted on the ground that interest earned by the assessee on the fixed deposit made for performance guarantee of contract was furnished as a condition precedent to entering the contract being intrinsic and insegregable nexus with the work undertaken cannot be assessed as income from other sources.

17. The CIT(A) after considering the submission of the assessee observed that all the FDs are found to have been made as per the terms of the contracts and the interest earned thereon partakes the character of business income. He observed that in his view no separate addition is required to be made and the net profit estimated at 7% may be considered to have included in its fold the interest income as well. The CIT(A) further observed that while determining the net profit at 7%, the rate of profit disclosed by the assessee for earlier years inclusive of interest income on FDs have been taken into consideration.

18. The DR could not point out any specific error in the above finding of the CIT(A). Hence, we do not find any good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

19. In the result, appeals of the assessee and Revenue, both are dismissed.

Order pronounced in the open court on this 07/03/2018.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 07/03/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Gorakhnath Construction Pvt. Ltd.
E-42, Koel Nagar, Rourkela
2. प्रत्यर्थी / The Respondent-
ACIT, Rourkela Circle, Rourkela
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack