

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**I.T.A. No. 409/HYD/2016**  
Assessment Year: 2011-12

Dy. Commissioner of Income Tax, Circle-9(1), HYDERABAD	Vs	Sri Narender Reddy Kallu, HYDERABAD <b>[PAN: AMQPK2115C]</b>
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**(Appellant)**

**(Respondent)**

For Revenue	:	Smt. Geetender Mann, DR
For Assessee	:	Shri A. Srinivas, AR

Date of Hearing	:	23-05-2018
Date of Pronouncement	:	25-05-2018

**ORDER**

**PER B. RAMAKOTAIAH, A.M. :**

This is an appeal by Revenue against the order of the Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 30-12-2015. The Revenue is contesting the rate of 5% determined by the CIT(A) on subcontracts, whereas AO estimated the income at 12.5%.

2. Briefly stated, assessee a contractor filed his return of income for the AY. 2011-12 on 14-02-2012 declaring total income of Rs. 28,58,900/-. The same was taken up for

scrutiny. As assessee could not submit the relevant details called for, the income was estimated @12.5% of contract receipts and further addition of Rs. 49,76,500/- as unexplained cash credits on account of deposits in the bank account. AO completed the assessment u/s. 144 of the Act, determined the total income of Rs. 1,58,78,290/-.

3. Before the Ld.CIT(A) it was submitted that “he is not the main contractor, but a sub-contractor and income shown by assessee is true and correct and the same should be adopted. Without prejudice to the above submission, if estimate has to be made, it cannot be more than 5% as the assessee is a sub-contractor. The Co-ordinate Bench, Hyderabad has held 5% for sub-contractor to be a reasonable figure. Therefore, 5% of Rs. 6,34,01,925/- would work out to Rs. 31,70,096/-. In the worst scenario this figure may be adopted.”

4. Ld.CIT(A) decided the issue in favour of assessee, stating as under:

*“4.2. The Assessment order, submissions of the assessee and the material placed on record are considered. The assessee’s claim that they are sub-contractors and not a main contractor is borne by the record also. The TDS is made @1% by the payer, which shows that the assessee is a sub-contractor. Further, the assessee’s claim that the estimation of income @12.5% is on higher side also is reasonable. In case of sub-contractor, the income @4% to 6% is being estimated as per the orders of Hon’ble ITAT in various cases. Keeping in view the facts and circumstances of the case, income @5% of gross receipts is held to be reasonable and it is directed to estimate income accordingly. All the expenses including the depreciation is deemed to have been allowed”.*

5. After considering the rival contentions, we are in agreement with the order of Ld.CIT(A). There is no dispute with reference to the fact that assessee is only a sub-contractor. Even though Ld.DR relied on the Co-ordinate Bench decision in the case of M/s. Balaji Constructions, Kadapa wherein the decision in the case of M/s. Teja Constructions was relied for estimating income on sub-contract basis at 8%, there are many other Co-ordinate Bench decisions estimating income at 5% net of all deductions like depreciation and remuneration etc. In the recent decision in the batch of appeals in Sree Nagendra Constructions and Others, dt. 10-11-2017 (where one of us, JM is a party) it was held as under:

*“7. The learned DR had placed reliance upon the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Surendra Gulabchand Modi for keeping the matter pending till the appeals of the Madhucon Projects Ltd are disposed of by the CIT (A). We find that the said decision was for the A.Ys 1956-57 and 1957-58 and in the said cases, the issue was pending before the Hon'ble Supreme Court and not before the CIT (A). The judgment of the Hon'ble Supreme Court will be binding on all the Courts in India including the Tribunal whereas the order of the ITAT will be binding on the CIT (A). Therefore, the said decision is not applicable to the facts of the case before us. In the case of MAA Highways (cited Supra), we have already held that where the income is estimated after rejection of books of account, no further disallowance of business expenditure can be made. In the case before us also, the AO has made the estimation on the ground that the assessee had not incurred any expenditure and the amounts were never used for its business activities and were returned back to the main contractor. Since the facts and circumstances are the same before us as in the case of Maa Highways and since we have confirmed the estimation of income by the AO at 8% in the case of main contractor and 5% in the case of a sub-contractor, we see no reason to interfere with the order of the CIT (A)”.*

6. Since the decision of Ld.CIT(A) is in accordance with the principles on the subject, we do not find any reason to interfere. There can be no fixed rate in estimation of income which may vary from case to case on facts but given the facts of assessee being a sub-contractor, being an individual, estimation of income at 5% net of all deduction is reasonable. We therefore uphold the order of Ld. CIT(A).

7. In the result, the appeal of Revenue is dismissed.

*Order pronounced in the open court on 25<sup>th</sup> May, 2018*

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 25<sup>th</sup> May, 2018

TNMM

*Copy to :*

- 1. Dy. Commissioner of Income Tax, Circle-9(1), Hyderabad.*
- 2. Sri Narender Reddy Kallu, D.No. 17-1-388/2/A/7, Flat No. 201, Sai Tejaswani Enclave, Laxmi Nagar, Saidabad, Hyderabad.*
- 3. CIT(Appeals)-7, Hyderabad.*
- 4. Pr.CIT-7, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*