

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.260/Viz/2017  
(निर्धारण वर्ष/Assessment Year:2012-13)

Gudla Eswara Rao  
D.No.49-11-27/15  
Lalitha Nagar  
Visakhapatnam  
[PAN :AJUPG4697G]

Vs. Income Tax Officer  
Ward-1(3)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri C.Subrahmanyam, AR  
प्रत्यर्थी की ओर से/ Respondent by : Shri D.V.Subba Rao, DR  
सुनवाई की तारीख / Date of Hearing : 13.08.2018  
घोषणा की तारीख/Date of Pronouncement : 29.08.2018

**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[CIT(A)]-1, Visakhapatnam vide I.T.A. No.73/2015-16/ITO,W-1(3),Vsp/2016-17 dated 15.03.2017 for the assessment year 2012-13.

2. All the grounds in this appeal are related to the additional income of Rs.50,44,750/- declared by the assessee during the assessment proceedings and computation of gross receipts at Rs.2,13,21,000/- by the Ld.CIT(A) and estimation of income on the said gross receipts @ 12% by the Ld.CIT(A). The assessee is engaged in the business of construction of apartments and filed his return of income for the assessment year 2012-13 on 01.10.2012 disclosing the total income of Rs.7,94,280/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) by an order dated 30.03.2015 on total income of Rs.54,35,450/-. During the assessment proceedings, the Assessing Officer (AO) found that the assessee had admitted the turnover of Rs.1,20,00,000/- and declared the loss of Rs.4,89,699/-, as per the audited books of accounts u/s 44AB of the Income Tax Act, 1961 (hereinafter called as 'Act'). During the pendency of scrutiny assessment proceedings, the assessee declared the additional receipts of Rs.50,44,750/- and the 'deemed profit' of Rs.4,03,580/- thereby declared the gross turnover at Rs.1,70,44,750/- (1,20,00,000+50,44,750). The AO called for the explanation of the assessee to explain as to why the entire additional receipts of Rs.50,44,750/- should not be assessed to tax as undisclosed income. The assessee did not furnish any explanation with

relevant evidences to show that the sum of Rs.50,44,750/- was the business receipts and the assessee had incurred the expenditure relating to the additional receipts declared during the assessment proceedings. However, the assessee appeared before the AO on 27.03.2015 and filed a letter accepting the addition of Rs.46,41,170/- (Rs.50,44,750-Rs.4,03,580) as undisclosed income. Accordingly the AO completed the assessment on total income of Rs.54,35,450/-..

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and agitated against the addition of Rs.50,44,750/- instead of the profit on such amount u/s 44AD @8% which was offered by the assessee. The Ld.CIT(A) verified the contentions of the assessee and observed that the assessee had offered the additional income of Rs.46,41,170/- voluntarily and there was no force or coercion from the AO. The Ld.CIT(A) verified the record and given a finding that the AO has concluded the hearing on 25.03.2015 as per the order sheet and after conclusion of the hearing, the assessee had filed the letter voluntarily admitting the income on 27.03.2015, thus the admission was voluntary without any force and accordingly rejected the contention of the assessee

that the admission was due to pressure of the AO. The assessee prayed before the Ld.CIT(A) to estimate the income on additional receipts of Rs.50,44,750/- instead of making the entire sum as addition. The Ld.CIT(A) considered arguments of the Ld.AR and the information submitted by the assessee and found that the gross receipts of the assessee exceeded the limit of Rs.60,00,000/- hence the assessee is not entitled for presumptive taxation u/s 44AD of the Act. The Ld.CIT(A) also verified the bank account and observed that the gross receipts of the assessee was Rs.2,13,21,000/- but not Rs.1,20,00,000/- or Rs.1,70,44,750/- as submitted by the assessee. The Ld.CIT(A) estimated the income @12% on gross receipts which worked out to Rs.25,58,520/-apart from the bank interest of Rs.40,300/-.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the hearing, the Ld.AR argued that the assessee had received sum of Rs.40,00,000/- as per the bank account, which the Ld.CIT(A) included in the gross receipts. The above sum of Rs.40,00,000/- was advances and the same should be excluded from the turnover since the said receipts of Rs.40,00,000/- does not represent the income as per the system of accounting followed by the assessee. The

Ld.AR further submitted that the amount of Rs.50,44,750/- was pertaining to the miscellaneous civil contract works which were not accounted in construction account. It was submitted by the Ld.A.R that the assessee is maintaining the regular books of accounts for construction activity but not maintaining the accounts for civil contract works. Therefore, argued that it would be judicious to tax the income on estimation at 8% as per section 44AD of the Act on civil contract receipts. Similarly miscellaneous unrecorded credits of Rs.2,76,520/- was also included by the Ld.CIT(A) which should not have been brought to tax, as they do not represent the income for the impugned assessment year. According to the Ld.AR, the assessee has maintained the complete books of accounts for construction activity with regard to the turnover of Rs.1,20,00,000/- and book results should be accepted for the construction activity. With regard to receipts of Rs.40,00,000/-, the same represented the customer advances which should not be included in the gross contract receipts, since the work was not completed. Thus, argued that the estimation of income on Rs.40,00,000/- is arbitrary and unjustified. In respect of Rs.50,44,750/-, miscellaneous receipts, requested for estimation of income @8%. The Ld.AR further argued that the Ld.CIT(A) is not right in rejecting the books of accounts,

enhancement of receipts and estimation of income @12% which is very high.

5. On the other hand, the Ld.DR argued that as per the balance sheet, the assessee had received the sum of Rs.40,00,000/- and as per the agreement, the sums are to be received from the customers on stage by stage completion of the work. Once the amounts are received from the customer, it is established that the assessee had completed the construction activity to the extent of money received from the customers. It is immaterial whether the amount is lying in the bank account or in the balance sheet as advance. The amount of advance received by the assessee depending on the stage of completion of the work. Similarly, though the assessee stated that the assessee had maintained the complete books of accounts for the construction activity, as seen from 44AB report, the only activity carried on by the assessee was construction activity and no other activity was reported in the 44AB report. The assessee has neither produced the evidences for the expenses related to the additional gross receipt of Rs.50,44,750/ nor maintained the books of accounts. In addition to the above, though the assessee had received Rs.40,00,000/- the assessee

has neither shown the representing work in progress nor produced the evidences with regard to the completion of the work. Since the books of accounts does not show true and correct picture, the Ld.DR argued that the Ld.CIT(A) correctly estimated the income @12% on gross contract receipts and no interference is called for in the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on record.

6.1. Ground No. 1.0 and 1.7 are general in nature and no which does not require specific adjudication.

6.2. Ground No.1.1 to 1.3 are related to the admission of additional income of Rs.50,44,750/-. The assessee has filed the return of income admitting the total income of Rs.7,94,280/- and admitted the gross contract receipts of Rs.1,20,00,000/-. During the course of assessment proceedings, the assessee admitted additional receipts of Rs.50,44,750/- and declared the income at 8% u/s 44AB of the Act.. The assessee admitted the undisclosed income on 27.03.2015 by a letter against the completion of

hearing on 25/03/2015. The assessee has not brought on record any evidence to show that the AO has pressurized for admission of additional income. From the facts on record it is established that the assessee had voluntarily admitted the income and there was no truth in the assessee's argument that the admission was given by the assessee on the pressure of the AO. This fact was found correct by the Ld.CIT(A) after verification of the records. For ready reference we extract relevant part of the Ld.CIT(A) order which reads as under :

*"4.3. I have considered the submissions and details filed, I have also perused the assessment folder. As stated above, the assessee in his statement of computation of income shown income u/s.44AD of Rs.4,03,580/- (with reference to 8% of gross receipts of 50,44,750/-) income from contract business at Rs.4,89,699/-, income from consultancy profession at NH, and has shown gross total income of Rs.893,279/-, and after claiming deduction u/s.80C of Rs.99,000/- declared total income of Rs7,94,279/-. An income and expenditure statement was also enclosed wherein the gross receipt was shown at Rs.1.20 crores and net income shown at Rs4,89,699/-. In regard to the gross receipts of Rs.50,44,751/-, the AO called upon the assessee to furnish the name, address and other details with verifiable evidence. The assessee had furnished the breakup details for the impugned amount of Rs.50,44,751/-, as being from Eshwar Prasad (Rs.14,71,000/-), Vishnu Priya (Rs29,00,000/-), G.Prameeta (Rs.5,00,000/-) & Others (Rs.1,73,751/-) and requested time to file their details and confirmation letters. On 23.3.2015, the assessee filed confirmation letter from Easwari Prasad & Vishnu Priya, and also requested to make certain corrections in the details earlier filed. Subsequently on 25.3.2015, other confirmation letter from Lavanya was also filed. The AO on perusal of the confirmation letters noted that all these parties have confirmed that the impugned payment to assessee was made towards construction of their houses and therefore the assessee was called upon to explain why the total receipts shown u/s.44AD should not be taken as business receipts and assessed to tax. In response, the AR had submitted that explanation was already filed vide letter dated 19.3.2015, With this the case*

was heard as on 25.3.2015 as recorded in the order sheet. Subsequently on 27.3.2015, the assessee had voluntarily appeared and offered the impugned amount to tax by filing the letter dated 27.3.2015.

4.3.1. The AR had contended that the impugned letter was given by the assessee out of coercion and threat and as dictated by the AO. However, the perusal of records belie such contention. As per the order sheet entry, the case was heard on 25.3.2015, and in response to the AO's queries the AR had requested to consider the replies given vide letters dated 19.3.2015 & 25.3.2015, and the AO; had not fixed the case for further hearing. The AO also recorded that the case was heard. The assessee only had voluntarily approached the AO on 27.3.2015. It is relevant to note that before 27.3.2015, the AO had already issued final show, cause notice and discussed the issues, and had also issued the order of attachment u/s.281B and thus all the issues were crystallized from the AO's perspective even before 27.3.2015. Therefore, I do not find any merit in the contention: that on 27.3.2015 the AO had threatened the assessee with dire tax consequences when the assessee came voluntarily to meet him. To my mind; It looks like that on the assessee's request the AO had suggested voluntary compliance and assisted in drafting the letter as the assessee was not accompanied by his auditor on that date. If the AO had really exercised coercion and threat as alleged then the said draft would not have been allowed with the assessee. The manner in which the letter was written legibly also do not indicate that the person who had written the letter was under coercion or duress. Even If the contention of threat and coercion were to be believed, it is not known what prevented the assessee from filing a letter of retraction on the very next day, No explanation was given as to why Letter of retraction could not be filed on the very next date. It is settled principle of law that a retraction to an admission has to be made as and when the threat or coercion had ceased to exist. The fact that the assessee had not chosen to file a retraction letter immediately, also suggest that there is no truth in these contentions and allegations, and that these contentions and allegations are mere afterthought made to suit the assessee's convenience. The assessee has filed an affidavit dated 22.8.2015 only during the appeal hearing, after a lapse of five months and therefore the averments made in the affidavit cannot be as such believed without any corroborative evidence. Besides except averring that the AO was annoyed there was no averment as to the specific threat thrown at the assessee. Therefore, I do not find merit in the contention that the assessee had given the disclosure letter out of coercion and threat.

During the appeal hearing the Ld.A.R did not place any material to controvert the finding of the Ld.CIT(A). In the instant case the assessing officer has called for the explanation from the assessee and the hearing was completed on 25/03/2015 and the assessee filed admission letter on 27/03/2015 and there was no evidence to establish that the AO has used any pressure for admission of undisclosed income. Thus we do not find any reason to disagree with the finding of the Ld.CIT(A) on this issue. Accordingly we hold that the admission was given voluntarily without any pressure from the AO. Accordingly, we dismiss ground No.1.1, 1.2, 1.3 as baseless and untenable. However at the conclusion, the Ld.CIT(A) ordered for estimation of income on the entire gross receipts @12%, hence this ground has no relevance in this appeal.

6.3. Ground No.1.4 to 1.6 are related to the determination of the gross receipts at Rs.2,13,21,000/- and estimation of income @12% by rejection of books of accounts. In this case, as per the bank accounts, the assessee had received the gross receipts of Rs.2,13,21,000/- as against the admission of Rs.1,20,00,000/- in the books of accounts. Subsequently, TheLd.CIT(A) has called for the bank accounts and observed that the

assessee had received Rs.7,50,000/- and claimed as advance without any basis. The Ld.CIT(A) further observed that the actual receipts of 'Star Residency' was Rs.1,52,50,000/- but not Rs.1,20,00,000/- as admitted by the assessee. Other receipts were Rs.60,71,000/-, but not Rs.50,44,750/- as admitted during the assessment proceedings. Thus, the aggregate receipts worked out to Rs.2,13,21,000/- as against the admission of gross receipt of Rs.1,70,44,750/- inclusive of additional contract receipts. The Ld.CIT(A) has clearly worked out the gross receipts with a detailed discussion. For ready reference, we reproduce the relevant part of the order of the Ld.CIT(A) which reads as under:

*"4.3.5. The assessee's contention was that the receipts from his contract business relating to 'Star Residency' was credited in a separate bank account (SBI A/c. No. 31615659748) which account was said to be audited, and that the receipts declared u/s 44AD were credited into other bank account ( i.e. 531 A/c No.10012558333 & ING Vysya Bank A/c No.742010022818) and which income was estimated and the said accounts were not audited. However, the perusal of the audited Balance Sheet show that the closing balance as on 31.3.2012 in 531 A/c No. 10012558333 & ING Vysya Bank A/c. No.742010022818 were also reflected therein. It is also noticed that the assessee had made payment for purchase of car from this 531 A/c No. 10012558333, and the depreciation of the car has been claimed in P & L Account, and the asset declared in the Balance Sheet. The liability towards car loan with Axis Bank was shown in the audited balance sheet though the payment to the car loan was through SB A/c. No. 10012558333. It is also seen that the From 3CD report qualifies that 'sundry debtors are subject to confirmation. However, the audited balance sheet does not show any sundry debtors. Thus, it is apparently seen that the transaction in the two bank accounts also forms part of the audited balance sheet and hence the correctness of these financial statements is doubtful and not reliable. The assessee has not furnished any detail relating to expenditure incurred with*

regard to receipts declared u/s44AD, and it is not verifiable whether such expenditure are part of the expenditure debited in Income & Expenditure statement. It is also seen that in the Income & Expenditure statement, the assessee has shown merely gross receipts of Rs.1.2 crores, and has not declared work-in-progress / closing stock in relation to substantial purchases effected. It is improbable that there was no work-in-progress / closing stock. On the other hand, the assessee has claimed certain advances in the balance sheet without showing corresponding work-in-progress/stock. All these discrepancies clearly show that the profit declared in these financial statements is not reliable and not correct

4.3.6 It is also noted that apart from the receipts to the tune of Rs50,44,751/- - declared u/s.44AD, the assessee had claimed an amount of Rs.7,50,000/- as advances, but the assessee had not given basis for the same. If the provisions of Section 44AD had to be invoked, then the entire gross receipts have to be reckoned for the purpose of estimation. Thus, the income offered by way of estimate made u/s 44AD is not correct & justified.

4.3.7 On perusal of the, SBI A/c. No. 10012558333, it is seen that the assessee had not given any explanation to the AO for the cheque credits to the tune of Rs. 2,76,250/- (Rs.34,500/- on 25/4/2011, Rs.18000/- on 28/4/2011, Rs.10000/- on 13/5/2011, Rs.13,750/- on 14/5/2011 & Rs.2,00,000/- on 11/1/2012). It was also noted that interest credited in this account to the tune of Rs.40,300/- was not offered to tax. The copy of ING bank statement was not furnished though it was claimed to have been furnished.

4.3.8 Taking into account the totality of all facts & circumstances, the discrepancies referred: above in the financial statements, I consider it appropriate to reject the book results declared in the financial statements and estimate the income from the construction business. The gross receipts from the project, 'Star Residency' was found to be Rs.1,52,50,000/- (Rs.120,00,000 + Rs.32,50,000/-) and gross receipts from other contract work was found to be Rs.60,71,000/- (Rs.50,44,750 + Rs.7,50,000 + Rs.2,76,250) and the aggregate receipts come to Rs.2,13,21,000/- and it would be fair and reasonable to estimate income at 12% on such receipts, which work out to Rs.25,58,520/-. The AO also may take into account the bank interest not declared of Rs.40,300/- and re-compute the total income accordingly.

6.4. During the appeal hearing, the Ld.AR canvassed for estimation of income @8% on gross contract receipts and to exclude the sum of

Rs.40,00,000/- stated to be advances received from the customers. The Ld.AR also argued the said receipts of Rs.40,00,000/- were received on 28.03.2015 and it is unjust to hold the same as receipt includible in gross receipts since the assessee is following stage to stage completion of work.

6.5. We have considered the submission of the Ld.AR and observed that the assessee has not declared the contract receipts correctly. The fact that the assessee has declared additional contract receipts only after taking up the case for scrutiny established that the assessee is suppressing the receipts and the books of accounts does not show true and correct financial transactions. Though the Ld.AR canvassed for excluding the receipts of Rs.40,00,000/- as advances, perusal of construction agreement shows that the customers are required to make the payment on completion of work stage by stage basis. During the appeal hearing, the Ld.AR did not establish with any tangible evidence that the assessee has not completed the construction to the extent of the receipts received by the assessee. In the absence of any evidence to establish that the assessee had received advances from the customers are not directly relatable to the stage of completion of the work, the submission made by the Ld.AR is not tenable.

Similarly the assessee did not place any evidence to show that credits of Rs.2,76,250/- are not includible in gross receipts. As per the Income Tax Act, the assessee obliged to maintain the books of accounts for the entire business but not piece meal. In the instant case there is no dispute that the entire receipts of Rs.2.13.21000/- represent the business receipts against the admission of turnover of Rs.1,20,00,000/- in the return of income. Though the assessee canvassed for exclusion of receipts of Rs.40.00 lacs from the turnover of the year under consideration no supporting evidence was placed by the assessee to show that the receipts were received in advance before completion of the work. The agreements placed before us support that the receipts were business receipts required to be assessed in the impugned assessment year. Therefore, we hold that the entire receipts worked out by the Ld.CIT(A) to the extent of Rs.2,13,21,000/- rightly assessed by the Ld.CIT(A) as gross contract receipts for the year under consideration.

6.6. In this case, the Ld.CIT(A) estimated the income @12% and the Ld.AR did not bring any tangible evidence to show that the profit of the assessee was less than 12%. The assessee has neither submitted the details of

expenditure relatable to the additional gross contract receipts admitted by the assessee nor the advances received by the assessee as per bank account. The assessee has not declared the true and correct receipts and the income earned there from. Only after the case was selected for scrutiny and called for the details, the assessee had admitted the additional gross receipts of Rs.50,44,750/- before the AO. Though the assessee stated that the Sum of Rs.40.00 lacs represent the advance but not established the same with any evidence. Therefore, we hold that the Ld.CIT(A) has rightly rejected the books of accounts and estimated the income fairly @12% and we do not find any reason to interfere with the order of the Ld.CIT(A).

6.7. The assessee has raised another issue stating that the Ld.CIT(A) has not given an opportunity for rebuttal of the gross receipts and consequent estimation of income. During the appeal hearing, we have given an opportunity to the Ld.AR to place the relevant material to show that the turnover was less than the sum computed by the Ld.CIT(A) and the income estimated was less than 12% but the Ld. AR did not make out a case with tangible evidence to establish that the contract receipts were less than Rs.2,13,21,000/- and the profit of the assessee was less than 12%.

Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld. Accordingly the appeal of the assessee on this ground is dismissed.

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

The above order was pronounced in the open court on 29<sup>th</sup> Aug, 2018.

<p>Sd/-          (बी.दुर्गा राव)  <b>(V. DURGA RAO)</b>          न्यायिक सदस्य/<b>JUDICIAL MEMBER</b> लेखा सदस्य/<b>ACCOUNTANT MEMBER</b>          विशाखापटणम /Visakhapatnam          दिनांक /Dated :29.08.2018          L.Rama, SPS</p>	<p>Sd/-          (डि.एस. सुन्दर सिंह)  <b>(D.S. SUNDER SINGH)</b>          न्यायिक सदस्य/<b>JUDICIAL MEMBER</b> लेखा सदस्य/<b>ACCOUNTANT MEMBER</b>          विशाखापटणम /Visakhapatnam          दिनांक /Dated :29.08.2018          L.Rama, SPS</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Gudla Eswara Rao, D.No.49-11-27/15, Lalitha Nagar, Visakhapatnam
2. राजस्व/ The Revenue – Income Tax Officer, Ward-1(3), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
 ITAT, VISAKHAPATNAM