

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &  
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1085/KOL/2015  
(ASSESSMENT YEAR-2010-11)**

DCIT, Circle-10(2), Kolkata-700069.	<b>vs</b>	M/s. Skyscraper Projects Pvt.Ltd., 53, Townshend Road, Kolkata-700025. PAN-AAJCS1656G
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh.Shankar Halder, Sr.DR JCIT	
<b>Respondent by</b>	Sh. S.M.Surana, Advocate	
<b>Date of Hearing</b>	27.11.2018	
<b>Date of Pronouncement</b>	13.02.2019	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

This appeal filed by the Revenue against the order dated 05.06.2015 passed by CIT(A)-4 Kolkata for AY 2010-11 u/s 143(3) of the Income Tax Act, 1961 (in short "Act").

2. Ground No.1 raised by the Revenue challenging the action of CIT(A) in directing the AO to grant depreciation as claimed by the assessee in the facts and circumstances of the case.

3. Heard both parties and perused the material available on record. The AO estimated the net profit of the assessee at 8% without allowing the depreciation as claimed under the impression that all the expenditures including the depreciation could have been allowed. The CIT(A) observed that no reasons were given by the AO for such disallowance. The contention of the Ld.AR is that the deduction for depreciation should be allowed separately before adopting estimation of net profit and placed reliance on

the order dated 20.01.2016 in the case of *Gourangalal Chatterjee Construction Pvt.Ltd.*, in ITA No.760/Kol/2012 for AY 2007-08.

4. A perusal of the said order, the CO-ordinate Bench of this Tribunal held that the depreciation is allowable deduction separately from the estimated net profit, accordingly directed the AO to give effect. On perusal of the order of CIT(A), we find that for not giving any reasons, the CIT(A) directed the AO to grant depreciation as claimed. For better understanding, the relevant portion at para 11 in the case of *Gourangalal Chatterjee Construction Pvt.Ltd.* (supra) is reproduced hereunder below:-

*11. "Considering the totality of the facts and circumstances of the case as are available before me I therefore hold that in estimating appellant's income; deduction for depreciation and interest was required to be allowed separately. This was not done by the AO. I find that even if net profit rate of 8% as adopted by the AO is applied in assessee's case then the gross operating profit works, out, to Rs. 73,39,740 being 8% of Rs.9,17,46,745. From this; if bank interest of Rs.3508977, bank charges of Rs.657561 and depreciation of Rs.12,87,911 is reduced then the net. income from business of civil contract execution works, out to Rs.18,85,290 which in % represents 2.1 % of contract receipt. This compares favorably against returned net profit of Rs.18,69,454 except for minor difference of Rs.16,000 approximately. The Ld. counsel relied on a comparative case of Amplified Engineers PAN AACCA6890M for AY 2005-2006 in ITA No.757/ K/2011 where the ITAT Kolkata in similar circumstances estimated the income of a civil contractor at 2% of the turnover of that assessee. Therefore considering the facts and circumstances of the case and the comparative instance I am of the opinion that it will meet the ends of justice if the assessee's business income for the year under consideration is estimated at 2.50% of the turnover. of Rs.9,17,46,745. Accordingly I direct the AO to assess the business income at Rs.22,93,668/- in place of Rs.18,63,450/- as discussed by the assessee. The assessee accordingly gets relief of Rs.51,41,882/-. These grounds are partly allowed."*

5. In view of the above, we find no infirmity in the order of CIT(A). Thus, sole Ground No.1 raised by the Revenue is dismissed.

6. Ground No.2 is relating to deletion of addition made on account of VAT payments.

7. Heard both parties and perused the material available on record. The CIT(A) found that the impugned amount involving Ground No.2 was disallowed u/s 43B of the Act for AY 2007-08 and accordingly, held the same amount is to be reduced under the year under consideration. Therefore, we direct the assessee to place evidence supporting the view of CIT(A) before the AO and the AO is directed to examine the same and give relief. Thus, Ground No.2 raised by the Revenue is allowed for statistical purposes.

8. In the result, the appeal of the Revenue is partly allowed.

**Order pronounced in the open court on 13.02.2019.**

**Sd/-**

**Sd/-**

**(P.M.JAGTAP)**  
**VICE PRESIDENT**

**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

*Date:-13.02.2019*

*\*Amit Kumar\**

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1. Appellant- DCIT, Circle-10(2), Kolkata-700069.
2. Respondent- M/s. Skyscraper Projects Pvt.Ltd., 53, Townshend Road, Kolkata-700025.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O**  
**ITAT, KOLKATA**