

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA Nos. 436/Hyd/2018
(Assessment Year: 2013-14)

Shri Cheeti Laxman Rao Vs Income Tax Officer
Secunderabad Ward 15(1)
PAN;AEAPC7046Q Hyderabad
(Appellant) (Respondent)

For Assessee : Shri T. Chaitanya Kumar
For Revenue : Shri D.J.Prabhakar Anand

Date of Hearing: 13.03.2019
Date of Pronouncement: 15.03.2019

ORDER

This is assessee's appeal for the A.Y 2013-14 against the assessment order passed u/s 143(3) of the Act and confirmed by the CIT (A)-7 Hyderabad dated 23.11.2017.

2. Brief facts of the case are that the assessee, an individual and a contractor doing earth work contracts, filed his return of income for the A.Y 2013-14 admitting total income of Rs.4,02,480/-. Due to selection under CASS, the case was selected for scrutiny and the AO required the assessee to furnish details regarding the assessee's income.

3. The assessee furnished the details and on verification of the same, the AO observed that the assessee had admitted income from machinery work at Rs.5.00 lakhs and agricultural

income of Rs.1.50 lakhs. From the ITS data, it was learnt the assessee has made cash deposits of Rs.80,33,050/- in his Savings Bank A/cs held by him with SBH and AXIS Bank. The assessee was therefore, asked to explain the sources of cash deposits and the basis for offering the income of Rs.5.00 lakhs. In response thereto, the assessee, vide letter dated 21.03.2016, explained that he is petty contractor doing earth work contract with machinery and that he has not maintained any books of account and had declared the net income on estimation basis. The assessee also submitted that he has deposited an amount of Rs.1,87,18,837/- in his four Bank Accounts which includes petty contract gross receipts of Rs.95,21,854 on which he admitted the net income of Rs.5.00 lakhs at 5%. He explained to the cash deposits to the extent of Rs.25,88,130/- as belonging to his wife Smt. Ch. Rajitha who is engaged in the handloom cloth business and had declared a net income of Rs.1,90,000/- in her return of income. It was also submitted that she has income from agricultural land which was gifted to her by her father and that she does not have any Bank A/c in her name and hence has deposited the same into assessee's Bank A/c. The assessee also explained that other deposits were made out of withdrawals and that he has received Rs.4.00 lakhs from M/s. Omega Impex and Rs.13,00,000/- from M/s Gavi Constructions as hand loans and Rs.3.00 lakhs from Axis Bank as Gold Loan and Rs.4,74,185/- was received from his son in USA, and Rs.4,23,649/- was from cancellation of DD made for acquiring liquor shops and Rs.4,23,649/- from redemption of short term deposit. The AO, however, was not convinced with the assessee's contention. He held that the assessee is required to maintain books of account and since he failed to do so, the

provision of section 44AD are applicable and the net profit is to be estimated at 8% of the total gross receipts. Therefore, he estimated the income at 8% of the receipts.

4. Thereafter, he proceeded to consider the sources for deposits and as regards the cash deposits belonging to the assessee's wife, the AO verified the record and found that she is having a Bank A/c in her name and that several transactions also were made from the said A/c. Therefore, he treated the said sum also as the income of the assessee. Similarly, he did not accept the assessee's contention on the agricultural income of the assessee's and also loans taken from M/s. Omega Impex and M/s.Gavi Constructions. He also did not accept the amount received allegedly from his son staying in USA. Therefore, he arrived at the total turnover of the assessee at Rs.1,72,87,696/- and estimated the income at 8% of the same and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us by raising the following grounds of appeal:

"1. The AO and the CIT (A) erred both on facts and under law in the assessee's case.

2. The AO and the CIT (A) ought to have treated Rs.47,62,315 (Rs.25,88,130 + Rs.13,00,000 - Rs.4,00,000 + Rs.4,74,185) as assessee's additional contract receipts.

3. The AO and the CIT (A) ought to have accepted the returned net profit rate of 5% of contract receipts, instead of 8% adopted by the AO and confirmed by the CIT (A).

4. The AO and the CIT (A) ought to have allowed the claim of deduction u/s 80C of the I.T. Act, 1961 preferred by the assessee.

5. Any other ground of grounds that may be urged at the time of hearing of appeal”.

5. The learned Counsel for the assessee submitted that the assessee is not the main contractor but a sub-contractor doing only earth work and therefore, as held by the Coordinate Benches of the Tribunal in a number of cases, the income should be estimated at 5% from the gross receipts. Further, he also reiterated the submissions of the assessee before the lower authorities explaining the sources for cash deposits into his Bank A/c.

6. The learned DR, however, supported the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, I find that the assessee has not maintained any books of account but evidently the assessee is into the business of doing earth work contracts by using machinery. Therefore, evidently he is not the main contractor but is a sub-contractor. As held by the Coordinate Benches of this Tribunal in a number of cases, the income from the sub contract work is to be estimated at 5% of the gross receipts. The AO is therefore, directed to estimate the net profit at 5% of the gross receipts.

8. Next come the question as to what should be the gross receipts. According to the assessee, his total income is Rs.95,21,854/-. Since the AO has treated the cash deposits also

as gross receipts of the assessee, the gross receipts have been arrived at Rs.1,72,87,696/-. The assessee had not been able to explain the sources along with any evidence before the CIT (A) or before this Tribunal. Therefore, I am not inclined to disturb the findings of the AO on this issue and therefore, the profit is also to be estimated at 3% of such gross receipts. The assessee's ground of appeal No.3 on the turnover is rejected.

9. As regards Ground of appeal No.4, I find that though, the AO has mentioned that he has disallowed the deduction u/s 80C, he has not made any addition in the computation of income. Therefore, this ground needs no adjudication and it is accordingly rejected.

10. In the result, assessee's appeal is partly allowed.
Order pronounced in the Open Court on 15th March, 2019.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 15th March, 2019.

Vinodan/sps

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- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order