

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 134/VIZ/2019  
(Asst. Year : 2012-13)**

M/s. N.R. Constructions, vs. ACIT, Circle-1,  
D.No. 2-59-7, Shanti Nagar, Kakinada.  
Kakinada, East Godavari Dist.

PAN No. AABFN 7969 A (Appellant) (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 29/04/2019.  
Date of pronouncement : 03/05/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 30/01/2019 for the Assessment Year 2012-13.

**2.** Facts of the case, in brief, are that the assessee is in the business of contract works, filed its return of income by admitting total income of Rs. 22,10,162/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Subsequently, the case of the

assessee was selected for scrutiny and assessment was completed under section 143(3), dated 04/03/2015. In the assessment order, the Assessing Officer has noted that it is seen from the profit & loss account, the total turnover reported for the year under consideration is Rs. 9,30,51,216/-. On verification, it is found that the assessee firm debited huge labour expenditure of Rs.2,89,09,008/- in the profit & loss account. This is approximately 30% of gross receipts. The Assessing Officer asked the assessee to produce all the bills along with supportive vouchers. On verification of the bills, all the labour payments are made in cash and being paid to one or two persons each day in lumpsum. There are no details like nature of work done on each day, how many people were engaged and paid accordingly etc. Accordingly, the Assessing Officer estimated 8% on main contracts receipts of Rs. 9,49,77,116/-, which comes to Rs.75,98,169/-. Accordingly, assessment is completed.

**3.** On being aggrieved, assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal filed by the assessee. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"7.6 I have carefully considered the grounds of appeal and various contentions raised by the assessee in the form of statement of facts. At the outset, it is an admitted fact that the assessee has maintained regular books of account on the*

basis of which income from business was disclosed at Rs.22,10,162/-, inclusive of interest on fixed deposits of Rs.71,864/-. Further, the AO has not pointed out any discrepancy in the books of account except stating that the assessee has failed to produce admissible, documentary evidence in support of labour charges claimed of Rs.2,89,09,008/- which worked out to 30% of the gross contract receipts. Under the circumstances, the moot question to be addressed in this case is- Whether, in the given facts and the circumstances of the case, the AO is legally correct to reject the books of account.

7.7 As seen from the assessment order, the AO embarked on verification of genuineness of labour payments in view of the fact that the assessee claimed 30% of the gross contract receipts as expenditure incurred towards labour charges. Accordingly, the AO opined that the said expenditure is on higher side requiring further investigation. Though the assessee has furnished certain vouchers in support of labour payments, but most of such vouchers were found to be self made without having specific details of name of the labourer, actual charges paid etc. Further, the assessee has made labour payments in cash through Mestries wherein the aggregate payment had exceeded Rs.20,000I- per day.

7.8 Under the circumstances, it is not the case of the AO to reject the books of account and resort to estimation of income @ 8% of the gross contract receipts. In the normal course whenever the assessee is not in a position to produce relevant details and documentary evidence in support of expenditure debited to profit & loss account, the AO is required to quantify the exact amount/expenditure in respect of which the assessee has failed to prove the genuineness of the transactions. Accordingly, the assessing authority may disallow the said unproved expenditure u/s.37(1) of the Act, while assessing the total income of the assessee. On other hand, the AO is not authorised under the Act to summarily reject the books of account merely on account of discrepancy in certain entries made in books of account and non furnishing of supporting documentary evidence.

7.9 In this regard, it is pertinent to note that, as per sub-section (3) of section 145 of the Act, the AO can reject the books of account on account of fulfillment of any of the following three conditions:

- 1) If the AO is not satisfied about the correctness or completeness of books of account maintained by the assessee;

- 2) *If the assessee has not maintained the books of account on the basis of method of accounting regularly followed i.e. either cash or mercantile; and*
- 3) *If the assessee has not employed the accounting standards notified by the Government for the purpose of computing the income.*

*If the AO is in a position to identify any one of the above conditions is not fulfilled by the assessee, then he is empowered to reject the books of account. In the instant case, as seen from the facts of the case, the AO has failed to point out any one of the three conditions stated above except stating that the assessee has failed to produce proper bills and vouchers in support of labour charges debited to P & L account.*

*7.10 In view of the above, I am of the considered opinion that the Assessing Officer has not made out a case to reject the books of account as envisaged u/s.145(3) of the Act. Accordingly, the estimation of business income @ 8% of the gross contract receipts cannot be sustained.*

*7.11 Be that as it may, coming to the issue of genuineness of the expenditure claimed by the assessee towards labour charges of Rs.2,89,09,008/-, as discussed elsewhere in this order, I am of the considered opinion that the assessee has not fulfilled all the requirements stipulated under the Act in order to claim expenditure incurred towards labour charges as allowable deduction u/s.37 of the Act. At this juncture, it is pertinent to note that in order to claim any expenditure as allowable deduction u/s. 37 of the Act, inter alia, the assessee has to fulfill the following basic requirements:*

1. *To explain the nature of goods purchased or services availed, as the case may be, in respect of which the assessee has claimed the expenditure.*
2. *To substantiate the requirement and necessity of such goods or services in the line of the business carried out by the assessee.*
3. *To provide the name and address of the parties from whom he had purchased the goods or availed the services, as the case may be, along with the details of charges paid thereof.*
4. *To produce the books of account and registers containing the details of payments made along with the date and mode of the payment to the parties concerned and to furnish the bills & vouchers issued by such parties. And in case, no bills & vouchers have been issued by such parties, then the self made cash vouchers to be prepared by the assessee containing the details of name and address of the*

*parties along with their signature.*

5. *In certain cases, in the event of any doubt raised by the AO, to produce the confirmation letters from the parties concerned and, if need be, even to produce the parties before the AO for examination.*

*7.12 In the instant case, though the assessee has fulfilled first two conditions, but failed to fulfill the last three crucial conditions in all respects i.e., producing the details of name and address of the persons concerned and wage registers maintained for the purpose of payment of labour charges. Accordingly, even though there is no doubt with regard to the assessee availing the services from the parties concerned and payment of labour charges to them, but there is an element of doubt insofar as the quantum or actual amount paid by the assessee to the parties concerned. Accordingly, the moot question that Whether the assessee has made exactly the same amount as mentioned in the self-made Cash vouchers to the parties concerned or he has made payment less than such amount? - has not been clarified with evidences in the instant case.*

*7.13 Under the circumstances, I am of the considered opinion that the assessee has failed to fulfill all the requirements of proving the genuineness of the payments made towards labour charges of Rs.2,89,09,008/- as reflected in the books of account. Accordingly, it is justifiable to disallow a part of the expenditure depending upon other facts and circumstance of the case. In the instant case, after considering the totality of facts and circumstances of the case, including the turnover of the business, and actual nature of business activities carried out by the assessee, I feel that a token disallowance of 10% of such expenditure would meet the ends of justice, Accordingly, the AO Is directed to re-compute the business income by disallowing 10% of labour expenses of Rs.2,89,09,008/- which worked out to Rs.28,90,900/-. Thus, the grounds of appeal raised by the assessee on this issue are partly allowed.*

*7.14 Summary:*

- 1) *The grounds of appeal with regard to rejection of books of account and estimation of income @ 8% of contract receipts are allowed. Accordingly, the ground of appeal against the assessment of interest on FDRs under the head income from Other Sources is also allowed.*
- 2) *The income of the assessee has to be re-computed by disallowing 10% of labour expenses of*

*Rs.2,89,09,008/- which worked out to Rs.28,90,900/- and adding the same to the returned income of Rs.22,10,162/-.*

- 3) *The AO is directed to revise the total income of the assessee a Rs.51,01,062/- (Rs,22,10,162/-+ Rs.28,90,900/-) as against the assessed income of Rs.76,70,030/-.*
- 4) *The assessee would get relief of Rs.25,68,968/- (Rs.76,70,030/- - Rs.51,01,062/-).*

*8.0 In the result, appeal for AY 2012-13 is partly allowed.*

**4.** Before us, Id. Departmental Representative supported the orders of the authorities below.

**5.** On the other hand, Id. counsel for the assessee has submitted that the Id. CIT(A) ought to have been granted more relief to the assessee.

**6.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**7.** In this case, the assessee is carrying in the business of contract works filed its return of income. The return filed by the assessee is processed under section 143(1). Subsequently, case of the assessee is selected for scrutiny and assessment is completed. During the course of assessment proceedings, the Assessing Officer has found that the assessee has claimed huge expenditure on account of payments to the labour. When the Assessing Officer asked, the assessee has not produced proper evidence to support the payments. Accordingly, the Assessing Officer has estimated

the income at 8% of the receipts received by the assessee. On appeal, the Id. CIT(A) by considering the entire facts and circumstances of the case has observed that the income of the assessee has to be recomputed by disallowing 10% of labour expenses of Rs. 2,89,09,008/-, which works out to Rs.28,90,900/- and adding the same to the returned income of Rs. 22,10,162/-. By the above observations, the Id. CIT(A) partly allowed the appeal of the assessee. Therefore, we find no reason to interfere with the order passed by the Id. CIT(A).

**8.** In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 03<sup>rd</sup> day of May, 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 03<sup>rd</sup> May, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - M/s. N.R. Constructions, D.No. 2-59-7, Shanti Nagar, Kakinada, East Godavari District.*
2. *The Revenue - ACIT, Circle-1, Kakinada.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A)-6, Hyderabad.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.