

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.76/Bang/2019
Assessment year : 2015-16

M/s Bhavani Erectors Pvt. Ltd., P.B No.002, Plot No.103&104, Shri Sugureswar Nagar, Sakthi Nagar, Raichur.  PAN – AACCB 0924 H.	Vs.	The Asst. Commissioner of Income-tax, Circle-1, Raichur.
APPELLANT		RESPONDENT

Assessee by	:	Shri R Suresh Kumar, C.A
Revenue by	:	Shri R.N Siddappaji, Addl. CIT

Date of hearing	:	20.06.2019
Date of Pronouncement	:	20.06.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 31/10/2018 passed by Id CIT(A), Kalaburgi and it relates to asst. year 2015-16.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the order of the AO in estimating the income of the assessee at 8% of the gross receipts.

3. We heard the parties and perused the record. The assessee is engaged in the business of execution of EPC Contracts. The assessee filed the return of income for the year under consideration on 30/9/2015 declaring a total income of Rs.1543.69 lakhs. The assessee was subjected to a survey operation u/s 133A of the Act on 19/11/2015. During the course of survey, it was stated by the assessee that the books of accounts are maintained in tally accounting package at its corporate office in Kerala. However, the assessee furnished soft copies of books of accounts during the course of survey proceedings. On verification of the same, the survey team noticed many discrepancies. When this fact was pointed out to the assessee, it stated that the computer has got corrupted. Though the assessee furnished rectified copies of books of account, yet the assessee could not reconcile the discrepancies noticed in the Survey with the corrected set of books of accounts. Subsequently the AO issued notice u/s 143(2) of the Act on 19/9/2016. Based on the statement recorded from the Managing Director of the assessee company on various dates after survey, and after hearing authorized representative, the AO estimated the income of the assessee at 8% of the total turnover as reported in Form No.26AS and accordingly determined the total income of the assessee at Rs.1787.08 lakhs. In effect, the AO did not consider the result declared by the assessee in its books of account. The same was confirmed by the Id CIT(A) and hence the assessee has filed this appeal before us.

4. We heard the parties and perused the record. We noticed that the AO has not examined the books of account of the assessee. Admittedly, the assessee has filed return of income prior to the date of search and it was stated that the accounts of the assessee have been audited and tax audit report was also filed. We noticed that the AO has given importance to the soft copy of books furnished during the course of survey from which

many discrepancies were noticed by the Survey team. We notice that the assessee has admitted the mistakes and has explained that they have occurred on account of error in the computer system. There is no dispute with regard the fact that the assessee has furnished rectified copies of books of accounts. The said books of account have not been considered by the AO, only for the reason that the assessee could not reconcile the discrepancies noticed in the soft copy of books of account with rectified copy of books of account.

5. We have noticed earlier that the soft copies of books of account furnished during the course of survey proceedings have been admitted by the assessee as incorrect on account of error in the computer system. The said fact has not been found to be incorrect by the AO. We are of the view that the AO was not justified in asking the assessee to reconcile the discrepancies noticed in the incorrect books of account with correct books. It is an undisputed fact that the assessee has filed its return of income for the year under consideration on the basis of corrected books of account and further they have been audited also. This is evidenced by the tax audit report. Accordingly, we are of the view that the AO should have proceeded to assess the income of the assessee on the basis of return of income and the related corrected books of account. Accordingly we are of the view that the tax authorities are not justified in estimating the income of the assessee by disregarding return of income and the books of account. Under these set of facts, we are of the view that the assessment has to be done denovo by AO by duly considering the return of income and the related books of account of the assessee.

6. Accordingly we set aside the order passed by the Id CIT(A) and restore all the issues to the file of the AO with the direction to do the assessment denovo.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **20<sup>th</sup> June, 2019.**

Sd/-

**(Pavan Kumar Gadale)**  
**Judicial Member**

Bangalore,  
Dated, 20<sup>th</sup> June, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

Sd/-

**(B.R Baskaran)**  
**Accountant Member**

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....
8. Date on which the file goes to the Bench Clerk  
.....
9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
12. The date on which the file goes to dispatch section for  
dispatch of the Tribunal Order .....
13. Date of Despatch of Order.  
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