

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 461/Hyd/2019
Assessment Year: 2009-10**

Dy. Commissioner of Income-tax, Circle – 5(1), Hyderabad. vs. PCL Intertech Lenhydro Consortium Joint Venture, Hyderabad.

(Assessee) PAN – AAGFP 1164 B
(Respondent)

Revenue by : Shri Y.V.S.T. Sai
Assessee by : Shri V. Raghavendra Rao

Date of hearing : 05/07/2019
Date of pronouncement : 31/07/2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the revenue is directed against the order of CIT(A) – 4, dated 30/01/2019, Hyderabad for AY 2009-10.

2. Brief facts of the case are, the assessee, engaged in the business of execution of civil contract works of Dam Slipway & Power houses of Koteswar HEP and not filed its return of income for the assessment year 2009-10. As no return of income was filed inspite of having taxable income, the case was reopened u/s 148 of the Income Tax Act, 1961 (in short 'the Act') after following due procedure after taking approval of Pr.CIT-4, Hyderabad. A notice u/s 148 of the Act was issued and in response to the said notice, the assessee filed its return of income on 30.12.2015 for the AY 2009-10 by declaring total income of Rs. NIL. Subsequently, notices u/s 143(2) & 142(1) were issued to submit the information called for. In response to the notices the Authorised Representative (AR) of the assessee appeared and

furnished the information/ details as called for. After going through the information furnished/produced and after a detailed discussion, the Assessing Officer completed the assessment by estimating the income @6% of contract receipts of Rs.235,90,17,325/- against the NIL income shown by the assessee, by observing as under:

- *The assessee, for the assessment year under consideration, had undertaken contract work from Tehri Hydro Development Corporation Limited (THDCL), Rushikesh, Uttaranchal. During the year under consideration, the assessee shown the gross receipts at Rs.235,90,17,325/- on which the tax deducted at source was claimed at Rs.5,34,55,435/-. The assessee submitted that it has not maintained any books of accounts and offered income Rs. NIL.*
- *The assessee's AR contended and replied that the JV had shown Rs.NIL income based on assessment of its group JV "PCL MVR" JV.*
- *During the course of assessment proceedings, the AR of the assessee was asked to produce books of accounts. Since no books are maintained by the assessee, the assessee-company had declared the profits at Rs.NIL.*
- *In view of non-maintenance of any books of accounts by the assessee, the AO has obtained the 26AS of member of JV i.e. M/s. Progressive Construction Limited who are executing the work. However, the assessee's name does not appear in the 26AS of M/s. Progressive Constructions Limited in the contract receipts shown by M/s. Progressive Construction Limited, assessee's name is not present. That implies that M/s. Progressive Construction Limited has not got any work from M/s. PCL- Intertech Lenhydro Consortium Joint Venture.*
- *In the light of the above observations and facts brought on paper, M/ s. PCL Intertech Lenhydro Consortium Joint Venture has not passed on the contract receipts, it got from Tehri Hydro Development Corporation Limited (THDCL) to its members. It can hence be said that all the contract receipts, assessee has received from THDCL, were retained with the assessee itself. That being the case, the contract receipts have to be taxed in the hands of the assessee. This is exactly what the Hon'ble ITAT has suggested in assessee's own case vide PCL Sticco JV & PCL MVR JV ITA No. 1516 and 1517/H/2011 for the AYs 2006-07 & 2007-08, dated 21.09.2012 .*

** Having got the clarity on in whose hands the income has to be taxed it has to be now determined how much to be taxed, assessee has on its own offered Nil % of the gross receipts as income to be taxed. This is not acceptable as the income offered to tax is very low considering the nature of business and area of operations of the assessee-company. Accordingly, the income has been estimated at 6% of contract receipts i.e. Rs. 7,07,70,520/- (being 50% share by the assessee)."*

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and submitted before the CIT(A) as under:

"• In the matter of this appeal, the assessee is disputing of the estimate of rate of profit adopted by the AO.

• The work on the project has been continuing from the earlier years.

For the immediately preceding assessment year 2008-09 profit rate @2% has been adopted by the AO. The assessee raised a dispute against assessment in the hands of JV and also the rate of profit adopted in the assessment. However, the Id. CIT(A) dismissed the appeal and sustained the estimate of profit @2% of the receipts.

• For the immediately succeeding assessment year also the rate of profit has been accepted @2% as returned by the assessee.

• For this year, the AO made a departure from the earlier year and later year though the nature of work is the same and on the same project.

• Assessee relies on the assessment and appeal order for assessment year 2008-09, and the assessment order for AY 2010-11 (Copies of these orders furnished for ready reference)

• It is prayed that the rate of 2% estimate be accepted."

4. The CIT(A) after considering the submissions of the assessee as well as following the decision of his predecessor in assessee's own case for AY 2008-09 directed the AO to estimate income @ 2% on gross receipts instead 6% on gross receipts estimated by the AO, by observing as under:

"6.1 From the above, it is clear that income has accrued in the hands of the assessee during the previous year relevant to the AY 2009-10. However, the assessee has filed the return of income declaring NIL income. In view of the ratio laid down by

the decision mentioned (supra), the assessee earned income from the execution of contracts awarded by the Tehri Hydro Development corporation Limited (THDCL). In this regard, it is to be mentioned that for the earlier assessment year 2008-09, the income of the assessee has been estimated @2% on the gross receipts, whereas for this assessment year which is under appeal, the AO has estimated the income @6% on gross receipts. Since same facts are existing for the year under appeal, I am of the considered view that the action of the AO in estimating income @6% on gross receipts is on higher side and, I hereby direct the AO to estimate income @2% on gross receipts. As a result, the grounds raised in this regard are allowed.”

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

“1. The CIT(A) erred in directing the AO to estimate income at 2% instead of 5% of gross receipts without any basis whereas as per section 44AD, where no books of accounts were maintained, the income is to be estimated @ 8% of gross receipts.

2. Any other ground that may be urged at the time of hearing.”

6. Considered the rival submissions and perused the material on record. We notice that assessee is an entity formed to execute the civil contract work by the JV partners, namely, M/s Progressive Constructions Ltd., and M/s Intertech Lenhydro Consortium. Further, it is noticed that assessee has not maintained any books of account. It is not clear, who executed the civil contract. Since, assessee is only a facilitating entity, the work must have completed by one of the constituent of the JV. However, assessee has not brought on record whether assessee has transferred the TDS deducted by M/s Tehri Hydro Development Corporation. No information was submitted before us. However, we notice that in the immediate previous AY, i.e. AY 2008-09, income of the assessee was estimated @ 2% and there is no change in the business model, in our considered view, AO cannot increase the rate of estimation without any major deviation in the business model of the assessee. Therefore, we are inclined to accept

the findings of Id. CIT(A) and accordingly, upholding the order of CIT(A), we dismiss the grounds raised by the revenue.

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

Pronounced in the open Court on 31st July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st July, 2019

kv

Copy to:-

- 1) DCIT, Circle – 5(1), 3rd Floor, D – Block, Income Tax Towers, AC Guards, Hyderabad.
- 2) M/s PCL Intertech Lenhydro Consortium Joint Venture, Flat No. 65A, Ground Floor, Raghava Ratna towers, Chirag Ali Lane, Abids, Hyd. – 500 001.
- 3) CIT(A) – 4 Hyderabad.
- 4) Pr. CIT - 4, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File