

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी ,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.85/Gau/2014**  
Assessment Year :2010-11

Raitani Engineering Works (P) Ltd., Railway Colony, Pan Bazar, Guwahati- 781001 <b>[PAN No.AAACR 6691 K]</b>	<b>V/s.</b>	JCUT, Range-3, Aayakar Bhawan, G.S. Road, Christan Basti, Guwahati- 781005
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Assessee	Shri Somnath Ghosh, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Rabindro Singh, JCIT, DR
सुनवाई की तारीख/Date of Hearing	02-07-2019
घोषणा की तारीख/Date of Pronouncement	06-09-2019

**आदेश /ORDER**

**PER BENCH:-**

This assessee's appeal for assessment year 2010-11 arises against the Commissioner of Income Tax (Appeals)-Guwahati's order dated 19.02.2014 passed in case No.Guwa-60/2013-14, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act').

Heard both the parties. The assessee's detailed paper book running into 132 pages comprising of various documents, the Assessing Officer's notice during scrutiny, cash book of assessee's head office, computation, financial statements; stands perused.

2. The assessee's former substantive ground challenges correctness of the lower authorities' action disallowing various payments of Rs.8,02,64,780/- claimed as business expenditure. Both the learned lower authorities are of the

view that the assessee could not prove by way of cogent evidence as to what manner it had made the impugned payment for which the sums in question had been withdrawn in last three days of the relevant. The assessee's detailed paper book also fails to throw light on the issue. Learned authorized representative files a copy of this tribunal's decision in **ITA No.446/Gau/2013** decided on 24.05.2017 in assessee case itself for preceding assessment year 2009-10 rejecting its books thereby treating net profit @ 4% vide following detailed discussion:-

*"2. The sole issue raised by the assessee is against the action of the Ld. CIT(A) in confirming the addition under the head contract works amounting to Rs.2,86,70,423/-. Brief facts of the case are that the assessee is a private limited company engaged in carrying on the business of contract work with the Railways. PWD etc. According to the AO, the assessee has shown gross contract receipts for the year at Rs.47,78,40,398/-. The assessee has recognized the revenue on Project Completion Method and disclosed a net profit of Rs.1,80,68,995/- without considering the depreciation as per Income Tax Act, 1961 (**hereinafter referred to as the "Act"**) which in terms of percentage, comes to only 3.78% of the gross contract receipts. The net profit was shown at Rs.63,08,204/- which comes to only 3.78% of the gross contract receipts. The net profit was shown at Rs.63,08,204/- which comes to only 1.32% of the gross contract receipts after considering the depreciation as per I.T. Rules. According to the AO, the net profit as shown by the assessee appears to be very low considering the nature of works carried out by the assessee during the year under consideration. According to AO, the net profit as shown by the assessee appears to be very low considering the nature of works carried out by the assessee during the year under consideration. According to AO, in the P&L Account the assessee has debited 41,37,88,690/- on account of contract expenses incurred during the year, which consists of material purchases, labour expenses machinery expenses and carriage expenses of Rs.18,09,07,572/-, 14,37,26,401/-, 4,31,54,286/- and 4,60,00,429/- respectively. He also observed that the labour expenses of Rs.14,37,26,401/- were paid by way of self-made vouchers and hence, the said expenses are not verifiable. Therefore, he rejected the book result and invoked the provision of section 145 of the Act and so estimated the net profit at Rs.2,86,70,423/- @ 6% of the total turnover i.e. Rs.47,78,40,398/- over and above 3.78% of net profit already disclosed by the assessee. aggrieved, assessee preferred appeal CIT(A), who was pleased to confirm the action of AO. aggrieved, assessee is before us.*

*5. We have hearer rival submissions and perused the material available on record. before us the Ld. counsel contends that the AO has made the estimation without brining any comparable instances and results from which the estimation was drawn. According to him, the assessee's net profit results were not more than 4.67% and the average comes to 3.84% after depreciation. According to Ld. counsel, the estimation made without any*

*material cannot stand the scrutiny of law and has to be deleted. We reproduce below the earlier results of the assessee:*

Assessment year	Contract receipt	Profit (before depreciation)	@ of profit (before depreciation)	Profit (after depreciation)	% profit (after depreciation)
2005-06	280,633,404.00	15,652,623.99	5.58%	12,340,453.99	4.40%
2006-07	284,321,576.00	11,674,234.66	4.11%	7,691,499.66	2.71%
2007-08	496,857,461.50	24,062,691.75	4.84%	18,081,957.75	3.64%
2008-09	518,468,470.00	32,722,320.76	6.31%	24,196,722.76	4.67%
2009-10	477,840,398.00	29,317,514.27	6.14%	18,068,995.27	3.78%

*From a perusal of the above, we note that for AY 2008-09 the assessee has made maximum net profit of 4.67% and the lowest was in AY 2006-07 of 2.71%. We note that the assessee could not produce vouchers to the satisfaction of the AO for claiming certain expenses based on that the books of account were rejected by the AO. However, we note that the AO has not brought in any comparable cases to justify 6% addition made on the assessee over and above the returned income of the assessee. we take note that the assessee is a Govt. contractor and has shown gross contract receipt for the year to the tune of Rs.47,78,40,398/-. Which is 6.14% profit before depreciation and 3.78% after depreciation is allowed. We also note that the AO while completing the assessment determined the net profit of Rs.2,86,70,423/- at 6% of turnover without reducing the net profit of Rs.63,08,204/- already returned by the assessee. Thereby determining the effective net profit at 8.78% which in our considered opinion is high because the AO has not brought any comparable cases to justify such an estimation. Therefore, taking into consideration all the facts and circumstances and the earlier results of the assessee as (supra) and the average thereon comes to 3.84% so, we are of the considered opinion that a net profit of 4% would be just and reasonable to meet the ends of justice. We order accordingly."*

This clinching factual position has gone unrebutted from Revenue's side. We therefore hold that the assessee's books claiming the impugned expenditure of ₹8,02,64,780/- also deserve to be rejected on this count alone for lack of supportive cogent evidence. Faced with this situation we deem it appropriate to estimate the assessee's net profit on its turnover from confirmation receipts of ₹61,34,50,121/- @ 5.10% than that already declared @ 4.55% of ₹279,26,482/- as per assessment order dated 30.03.2013. It is made clear that we are very much opinion of assessee's fluctuating net profit result from 4.40% to 2.71% since assessment year(s) 2005-06 onwards as per the learned co-ordinate bench's decision. Our instant estimation shall also be not treated as a precedent in any other assessment year on the same is made to

avoid an instance of absurd profit results as well as a consequence to the impugned disallowance of ₹8,02,64,780/-. Necessary computation to follow.

3. The assessee's latter substantive ground challenges correctness of sec. 40(a)(ia) disallowance on account of non-deduction of TDS of ₹6,74,760/-. After vehemently arguing for sometime against the impugned disallowance, learned counsel submits that this assessee no more wishes to press for instant grievance keeping in mind smallness of the amount with a rider that same is not treated as precedent in any other assessment year. We therefore decline the latter substantive ground as not pressed in above terms.

4. This assessee's appeal is partly allowed in above terms.

Order pronounced in accordance with Ryle 34(3) of the ITAT Rules by putting on Notice Board on 06/09/2019

Sd/-  
(लेखा सदस्य)  
( A.L.Saini)  
(Accountant Member)  
Guwahati,  
\*Dkp

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

दिनांक:- 06/09/2019 गूवाहाठी ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Raitani Enging. Works(P) Ltd., Railway Colony, Pan Bazar, Guwahati-781001
2. प्रत्यर्थी/Respondent-JCIT, Range-3, Aayakar Bhawan, G.S.Road, Christan Basti, Guwahati-781005
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)  
आयकर अपीलीय अधिकरण,

गूवाहाठी ।