

## **आयकर अपीलीय अधिकरण, पटना न्यायपीठ, पटना**

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA**  
श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष।  
**BEFORE SHRI CHANDRA MOHAN GARG, JM & SHRI L.P. SAHU, AM**  
आयकर अपील सं./ITA No.01/PAT/2011

(निर्धारण वर्ष / Assessment Year :2007-2008)

Alectra Construction Ltd., C/o Anil Kumar Singh, New Colony, Dharampur, Samastipur	Vs.	DCIT, Circle-3, Darbhanga
स्थायी लेखा सं./PAN No. : <b>AAECA 8497 Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Pankaj Jyoti, AR
राजस्व की ओर से /Revenue by	:	Shri Supriya Biswas, JCIT-DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	<b>16/09/2019</b>
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	<b>18/09/2019</b>

### **आदेश / ORDER**

#### **Per Bench:**

This appeal is filed by the assessee against the order passed by learned CIT(A)-I, Patna, dated 30.09.2010 for the assessment year 2007-2008.

2. Earlier this appeal was disposed off by the Tribunal vide order dated 08.08.2011, however, on miscellaneous application filed by the assessee, the same was restored to its original number vide order dated 26.06.2019. Now, the appeal was listed today i.e. on 16.09.2019 and the same was heard and disposed off in the following manner.

3. The sole and effective ground of appeal raised by the assessee is that the CIT(A) has erred in confirming the estimation of 8% made by the Assessing Officer.
4. Brief facts of the case are that the assessee derives income from civil contract work of different works department of Govt. of Bihar and filed its return of income on 23.12.2007 declaring total income at Rs.1,07,66,591/-. The case was selected for scrutiny and statutory notices were issued to the assessee. Thereafter the Assessing Officer framed the assessment estimating net profit @8% on the gross contract receipt after considering all expenses including depreciation.
5. In first appeal, the CIT(A) upheld the action of Assessing Officer in estimating the net profit @8% on the gross contract receipt of the assessee. The CIT(A) further observed that the assessee is not entitled to depreciation since the same has been assumed to have been allowed while determining the income by applying net profit on the gross receipts.
6. Ld. AR, at the outset, placed reliance on the decision of Hon'ble Patna High Court in the case of DCIT Vs. M/s Salauddin, rendered in Miscellaneous Appeal No.77 of 2010, dated 11.04.2012 and submitted that estimation of net profit may kindly be reduced to 6% which has been found justified and proper in a case of civil contract by the Hon'ble Patna High Court in the above case (supra). Further Ld. AR

submitted that in view of the binding nature of CBDT Circular, No.29-D/(XIX-14 of 1965), both the authorities below ought to have allowed the depreciation from the estimated net profit. In this regard, Id. AR relied on the decisions of Hon'ble Rajasthan High Court in the case of Shri Ram Jhanwar Lal Vs. ITO, 321 ITR 400 (Raj) and decision of Hon'ble jurisdictional High Court in the case of M/s Shyam Bihari Vs. CIT, [2012] 345 ITR 283 (Patna).

7. On the other hand, Id.DR relied on the order of the CIT(A).

8. After considering the rival submissions of both the parties and perusing the entire material available on record, we find in the instant case the Assessing Officer estimated net profit @8% after considering all expenses including depreciation. The CIT(A) confirmed the net profit @8% done by the Assessing Officer and also observed that the assessee is not entitled to depreciation on the estimated net profit. However, as per proposition rendered by the Hon'ble Patna High Court in the case of M/s Salauddin, rendered in Miscellaneous Appeal No.77 of 2010, dated 11.04.2012, wherein it has been held that in a case of civil contractor estimation of net profit @6% of the total contractual receipts is justified and reasonable. Therefore, respectfully following the same, we direct the Assessing Officer to estimate of net profit of the assessee @6% of the total gross contract receipts. With regard to allowability of depreciation as raised before us by the Id. AR of the

assessee, we find that the Board considered that where it is proposed to estimate the profit and the prescribed particulars have been furnished by the assessee, the depreciation allowance should be separately worked out. In all such cases, the gross profit should be estimated and the deductions and allowances including the depreciation allowance should be separately deducted from the gross profit. If it is considered that the net profit should be estimated, it should be estimated subject to the allowance for depreciation and the depreciation allowance should be deducted therefrom. This issue has also been decided by the Hon'ble Rajasthan High Court in the case of Shri Ram Jhanwar Lal (supra) relying on its earlier decisions in the case of Jain Construction Co. [2000] 245 ITR 527 and Bharat Construction Co. [2002] 125 Taxmann 366 (Raj) has held that where the Assessing Officer has adopted Net Profit rate in making assessment on best judgment assessment basis, even in that case allowance of depreciation is required to be made. Further the Hon'ble Patna High Court in the case of Shyam Bihari (supra) has observed as under :-

*"10. We have been taken through the provisions of circular of the Board dated 31.8.1965. According to that circular which is binding on the department and its authorities, where it is proposed to estimate the profit and the prescribed particulars have been furnished by the assessee, the depreciation allowance should be separately worked out. In all such cases, as per the circular, the gross profit should be estimated and the deductions and allowance including the depreciation allowance should be separately deducted from the gross profit. If the net profit is required to be estimated, it should be estimated subject to the allowance for depreciation and the depreciation allowance should be deducted therefrom."*

9. From the above judgments of the Hon'ble Rajasthan and Patna High Courts as well as the CBDT Circular, it is clear that where the Assessing Officer has adopted net profit rate in making the assessment on best judgment assessment basis, even in that case allowance of depreciation is required to be made. Therefore, we direct the Assessing Officer to re-compute the total income applying the net profit @6% and allow the depreciation accordingly as per our above observations, subject to returned income declared by the assessee. The sole ground of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18/09/2019.

**Sd/-**  
**(C.M.GARG)**

**Sd/-**  
**(L.P.SAHU)**

न्यायिक सदस्य / JUDICIAL MEMBER      लेखा सदस्य / ACCOUNTANT MEMBER

पटना / Patna; दिनांक Dated 18/09/2019

Prakash Kumar Mishra, Sr.P.S.(on tour)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- .
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पटना / DR, **आदेशानुसार/ BY ORDER,**  
ITAT, Patna
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**(Private Secretary)**

**आयकर अपीलीय अधिकरण, पटना / ITAT, Patna**