

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

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI V. DURGA RAO, JUDICIAL MEMBER**

**ITA No. 767/Hyd/2017
Assessment Year: 2011-12**

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

(Appellant) PAN – AAGFP 1664 B
(Respondent)

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

Date of hearing : 27/11/2019
Date of pronouncement : 04/12/2019

ORDER

PER V. DURGA RAO, J.M.:

This appeal filed by the revenue is directed against the order of CIT(A) – 4, dated 16/02/2017, Hyderabad for AY 2011-12.

2. Brief facts of the case are, the assessee, engaged in the business of civil contract works, filed its return of income for the assessment year 2011-12 declaring a total income of Rs. 4,45,18,525/-. During the course of assessment proceedings, the AO asked the assessee to produce books of accounts, however, the assessee submitted that it did not maintain any books of account and the assessee produced only 26AS statement. Since the assessee did not maintain books of account nor filed any other documents, declared profit at 2% of the gross receipts. The AO obtained 26AS of Member of JV i.e. M/s Progressive Constructions Ltd., who are executing the work. He noticed that the assessee's name did not appear in the 26AS of M/s Progressive Constructions Ltd. in the

contract receipts shown by M/s progressive Constructions Ltd., which implied that M/s progressive Constructions Ltd has not got any work from M/s PCL-Intertech Lenhydro Consortium JV. In view of the above observations, the AO estimated the income of the assessee at 5% of contract receipts, which comes to Rs. 11,12,96,312/-, rejecting the profit declared by the assessee at 2% of the gross receipts as income to be taxed.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A), who directed the AO to estimate the profits @ 3% of the gross receipts in stead of 5% estimated by the AO.

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

"1. The Hon'ble CIT(A)'s order is erroneous in law and facts.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeal) erred in directing the Assessing Officer to estimate income @3% 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.

3. The appellant prays that the order of the CIT(Appeals) on the above rounds be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary."

5. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Since the assessee did not maintain books of account, the assessee itself has estimated its profits @ 2% of the gross receipts, which was rejected by the AO and estimated the income of the assessee @5% of gross receipts. However, the CIT(A) directed the AO to estimate the profits @ 3% instead of 5%. In AY 2009-10 also, the CIT(A) directed the AO to estimate the profits @2% as against 5%

estimated by the AO, which was upheld by the ITAT, when the revenue preferred an appeal before it against the order of CIT(A). Therefore, we do not find any infirmity in the order of CIT(A) in directing the AO to estimate the profits @ 3% of gross receipts and upholding the order of CIT(A), we dismiss the grounds raised by the revenue.

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

Pronounced in the open Court on 4th December, 2019.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 4th December, 2019

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Copy to:-

- 1) ACIT, 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