

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.611/Viz/2018
(निर्धारण वर्ष/Assessment Year : 2010-11)**

Kothakota Sri Ramulu
D.No.17-9
Ch.Agraharam
Poosapatirega
Vizianagaram
[PAN :AKFPK9259E]

Vs. Income Tax Officer
Ward-2
Vizianagaram

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri B.Rama Krishna, DR

सुनवाई की तारीख / Date of Hearing : 11.12.2019
घोषणा की तारीख/Date of Pronouncement : 18.12.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA No.384/2013-14/ITO,W-2/VZM/2017-18 dated 10.18.2018 for the Assessment Year (A.Y.) 2010-11.

2. All the grounds of appeal are related to the estimation of income. The assessee is a labour supply contractor and for the A.Y.2010-11, the assessee filed the return of income electronically on 11.10.2010 admitting total income of Rs.4,76,320/- after claiming deduction under Chapter VI-A of Rs.1,00,000/-. The case was taken up for scrutiny and the AO found that for the assessment year under consideration, the assessee has received the gross receipts of Rs.2,63,53,011/-, out of which wages was Rs.2,46,28,400/- claimed as direct expenses. The AO further observed that except payment of PF, ESI etc., the entire expenditure was met by self made vouchers which is not verifiable in totality. The AO also observed that that in the immediately preceding assessment year, the AO made the addition of Rs.5,25,820/- on adhoc basis @ 15% of wages paid to temporary workers which the assessee had accepted. Since the entire expenditure was only supported by self made vouchers, the AO did not believe the expenditure, hence viewed that true and correct profits cannot be deduced from the books of accounts. Accordingly rejected the books of accounts and estimated the income @10% of the gross receipts.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) scaled down the estimation and directed the AO

to estimate the income @8% and accordingly allowed the appeal of the assessee partly.

4. Against which the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee is a labour contractor and major part of expenses was towards wages which can be made with only self made vouchers. The assessee has paid PF, ESI which is verifiable from the wages paid. The other expenditure was nominal and routine expenditure which is common for all labour contracts. The profit in this line is very less since the major part goes for the wage payments. The books of accounts were duly audited u/s 44AB of the Act and AO has not made any adverse comments on the books of accounts. The assessee has maintained the regular books of accounts and has obtained the acquaintance registers in respect of temporary labour engaged and complete details regarding number of days worked by them and the amount paid to them is duly recorded and receipts were obtained from them. The said workers cannot give bills to the assessee. Therefore, argued that since, regular books of accounts are maintained and statutory payments were made through bank account and could not obtain the pucca vouchers in respect of labour the estimation of income @8% is highly unreasonable in this case, since, the average net profit has never crossed

3.18% in the previous 3 years. The assessee has furnished the gross receipts and net profit of the last 3 years which are as under :

A.Y.	Gross Receipts	Net Profit	% of Net Profit
2007-08	90,80,749.19	1,62,096.38	1.79
2008-09	87,41,873.00	2,78,041.61	3.18
2009-10	2,00,02,492.00	5,21,759.39	2.61

Therefore argued that reasonable estimation can be resorted to and estimation of income @8% is unreasonable and arbitrary, hence requested to make the reasonable estimation.

5. On the other hand, the Ld.DR argued that the expenditure was made with the self made vouchers in the earlier year i.e. 2009-10 and the assessee himself had accepted for disallowance of 15% of the payment of temporary wages for disallowance. Therefore, argued that the Ld.CIT(A) has rightly estimated the income @8%, hence, requested to uphold the order of the Ld.CIT(A) and no interference is called for.

6. We have heard both the parties and perused the material placed on record. The assessee is a labour contractor and the major payments goes to wages. The assessee has maintained regular books of accounts which are being audited by Chartered Accountant u/s 44AB of the Act. The assessee made the payment of PF, ESI other than self made vouchers. The assessee

also maintained acquaintance rolls for temporary labour which is not disputed. In the earlier years, the profit of the assessee was 1.78%, 3.18% and 2.61% for the A.Y.2007-08 to 2009-10 respectively. Except self made vouchers, the AO did not give any other reasons or comparable cases to estimate the income @10%. Since the turnover exceeded Rs.1 crore, presumptive income u/s 44AD is not applicable unless the sufficient material is brought on record. Therefore, considering the facts and merits of the case, we hold that estimation of income @5% is reasonable and accordingly, the orders of the lower authorities are set aside and direct the AO to estimate the income @5% on gross contract receipts. The appeal of the assessee is partly allowed.

7. In the result, appeals of the assessee is partly allowed.

Order pronounced in the open court on 18th December, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 18.12.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Kothakota Sri Ramulu, D.No.17-9, Ch.Agraharam Poosapatirega, Vizianagaram
2. राजस्व/The Revenue - Income Tax Officer, Ward-2, Vizianagaram
3. The Principal Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam