

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA 'VIRTUAL COURT' AT KOLKATA

Before Shri S.S. Godara, JM & Dr. A. L. Saini, AM

ITA No.24/Pat/2018
Assessment Year:2010-11

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| M/s Vishnu Shankar Ojha Vill-Katayan, PS-Bihia, Bhojpur, Bihar-802152 | बनाम / V/s. | ITO, Ward-1, Ara |
| PAN No.AAEFB8040M | | |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी /Respondent |

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| अपीलार्थी की ओर से/By Appellant | Shri A.K. Rasgori, Advocate |
| प्रत्यर्थी की ओर से/By Respondent | Shri Ajay Kumar, Addl.CIT, Sr. DR |

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|--------------------------------------|------------|
| सुनवाई की तारीख/Date of Hearing | 14-09-2020 |
| घोषणा की तारीख/Date of Pronouncement | 14-09-2020 |

आदेश /O R D E R

Per Bench(Oral):

This assessee's appeal for assessment year 2010-11 arises against the Commissioner of Income-tax (Appeals), Patna's order dated 27.12.2017 passed in case No.128/CIT(A)-1/2012-13 involving proceedings u/s 143(3) of the Income Tax Act, 1961; (in short 'the Act').

Heard both the parties. Case file perused.

2. With the able assistance of both the learned representatives, we notice during the course of hearing that the Assessing Officer as well as CIT(A) have proceeded to disallow/add various expenses items in assessee's civil construction business after

observing that his books and vouchers; although maintained, could not be subjected to factual verification. Faced with this situation, Mr. Rastogi's only plea during the course of hearing is that although this taxpayer has raised former issue of correctness of the impugned disallowance/addition(s), he however restricts its grievance only to the extent of re-estimation of net profit rate in civil construction business. We therefore reject the assessee's books of accounts due to lack of factual verification of bills and vouchers in view of hon'ble jurisdictional high court's decision in DCIT vs. M/s Rishi Builders India Pvt. Ltd.; MA No.694 of 2010 dated 23.04.2018 to partly decline learned departmental representative's arguments supporting both the learned lower authorities' action under challenge to this effect. We thus direct the Assessing Officer to re-estimate the assessee's net profit rate @ 7.5% (going by Mr. Rastogi's concession during the course of hearing) as per law in consequential proceedings. It is made clear that the assessee's partners remuneration etc. shall also be considered for granting the impugned relief.

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

Order pronounced in open court on 14/09/2020 at the time of hearing.

Sd/-
(A. L. Saini)
Accountant Member

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

Kolkata;
Date: 14/09/2020
RS

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

1. अपीलार्थी/Appellant- M/s Vishnu Shankar Ojha
2. प्रत्यर्थी/Respondent- ITO, Ward-1, Ara

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाइल / Guard file.

//True copy//

By order/आदेश से,

Sr. Private Secretary, ITAT, Kolkata.