

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH : Hyderabad**

(Through Video Conference)

**Before Smt. P.Madhavi Devi, Judicial Member
And
Shri A. Mohan Alankamony, Accountant Member**

**ITA No. 1795/Hyd./2018
Assessment Year: 2012-13**

ACIT, Circle 1
Kadapa

vs. Sri Alle Bala Nagi Reddy
Kadapa

PAN: ADOPR7451D

And

**C.O. No. 09/Hyd/2019
(In ITA No. 1795/Hyd./2018)
Assessment Year: 2012-13**

Sri Alle Bala Nagi Reddy
Kadapa

vs ACIT, Circle 1
Kadapa

(Appellant)

(Respondent)

Assessee by : Sh. S. Rama Rao, Adv.
Department by: Sh. Sunil Kumar Pandey, D.R.

Date of Hearing : 07/12/2020
Date of Pronouncement : 31/12/2020

ORDER

Per P. MADHAVI DEVI, J.M.

The appeal is filed by the Revenue and the Cross Objection is filed by the assessee against the order of the Ld.CIT(A), Kurnool dated 15.06.2018.

2. It is observed the Revenue's appeal is filed with a delay of 02 days and being satisfied with the reasons given by ACIT, Circle 1, Kadapa vide letter dt. 26.09.2018, the delay is condoned.

The Cross Objection by the assessee is filed with a delay of 169 days and in the Petition for Condonation of delay, the assessee submitted that the order of CIT(A) was addressed to his home in his native place at Kadapa, where as the assessee was temporarily residing at Mumbai at that point of time and therefore, the postal cover which was redirected, reached him only on 01.09.2018 and thereafter, he returned to Hyderabad and got the C.O. prepared resulting in a delay of 169 days. Considering the reasonableness of the reasons for the delay, we condone the said delay and proceed to adjudicate the appeal of Revenue as well as C.O. by assessee as under.

3. Brief facts of the case are that the assessee, an individual, deriving income from contract works, filed his return of income for AY 2012-13 on 29.09.2012 admitting total income of Rs.1,91,38,410/-. The case was selected for scrutiny under CASS and notices were issued to assessee. But the assessee did not appear and therefore the AO was constrained to complete the assessment ex parte u/s 144 of the Income Tax Act, 1961 (the Act). The AO observed that the assessee has gross receipts amounting to Rs. 28,64,74,792/- and after claiming expenditure under different heads he admitted total income of Rs.1,91,38,410/-. The AO observed that the assessee has not furnished any information, bills, vouchers etc. in support of his claim of expenses debited to P&L account. Therefore, the AO treated the entire gross receipts of Rs.28,64,74,792/- as assessee's income and brought it to tax. Aggrieved, assessee preferred an appeal before the CIT(A) and also submitted that he is not maintaining the books of accounts and claimed that profit in this line of business is 6% on own contracts. It was submitted that the AO should have estimated the income at reasonable percentage which is about 6%. The CIT(A) accepted assessee's contentions, but held 7% of gross receipts to be reasonable profit percentage. He therefore partly allowed

assessee's appeal, against which, Revenue is in appeal before us, while the assessee has filed Cross Objection seeking relief of the balance amount also.

4. Ld.DR submitted that assessee has not filed any details either before the AO or before the CIT(A), and, therefore, the CIT(A) was wrong in estimating the income at 7% of gross receipts. Ld.DR submitted that in the absence of any evidence or material in support of the expenditure claimed by the assessee, the entire receipts have been rightly brought to tax by the AO.

5. Ld.Counsel for the assessee, on the other hand, supported the orders of the CIT(A) as far as estimation of income is concerned, and contended that the AO has treated the entire gross receipts as income of the assessee whereas the CIT(A), by taking into consideration the ITAT decision in assessee's own case for the AY 2006-07 and 2007-08, wherein 6% of gross receipts has been accepted as reasonable profit percentage, has held 7% to be reasonable profit percentage for the relevant A.Y. The Ld.Counsel for the assessee further submitted that the entire gross receipts cannot be brought to tax and the reasonable expenditure ought to have been allowed by the AO and that instead of 7%, the CIT(A) ought to have held 6% to be reasonable profit percentage.

6. Having regard to rival contentions and material placed on record, we find that the decision of ITAT was for A.Y. 2006-07 and 2007-08, wherein ITAT has observed as under:

"Considering facts of the case that the total contract receipt of the assessee are of Rs.6,33,24,998/- for A.Y.2006-07 and Rs.14,64,63,030/- for A.Y.2007-08, we are of the considered view that provisions of section 44AD will not be applicable as the contract receipts for both assessment years under consideration is more than Rs.40 lakhs. Further, we observe that the net profit declared by the assessee for A.Y.2007-08 is 4.98% as per chart placed at page 20 of PB. However, for A.Y.2006-07, assessee has disclosed net profit of 2.42%. Considering the facts that assessee could not give valid reasons for not producing books of account and other details as called for by the AO, we hold that estimation of income is justified. However, the net profit rate of 8% as

applied by authorities below is excessive considering the GP/NP rate of preceding years from chart at page 20 of PB, it will be fair and reasonable to apply the net profit rate of 6% of the total contract receipts at 6% for both assessment years under consideration."

But, the relevant A.Y. before us in 2012-13 and the CIT(A) without examining the profit percentage in the years before the A.Y. 2012-13 and without giving any reasons has estimated the profit percentage at 7% of gross receipts. In view of the same, we deem it fit and proper to remand the issue to the file of AO with a direction to re-consider the issue and accordingly estimate the income de-novo.

7. In the result, both Revenue's appeal as well as assessee's Cross Objection are treated as allowed for statistical purposes.

Order pronounced on 31st December, 2020.

Sd/-

(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 31st December, 2020.

***gmv**

Copy forwarded to:

1. Sri Alle Bala Nagi Reddy, D.No.3/82, Dhannawada Village, Jammalamadugu (M), Kadapa District 516 432
2. ACIT, Circle 1, Kadapa.
3. ACIT, Kadapa Range, Kadapa
4. Pr.CIT, Kurnool
5. D.R. ITAT Hyderabad
6. Guard File

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