

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA Nos.579 & 580/Hyd/2018		
Assessment Years: 2012-13 & 2013-14		
Asstt. Commissioner of Income Tax, Circle 5(1) Hyderabad	Vs.	PCL Intertech Lenhydro Consortium JV, Hyderabad PAN:AAGFP1664B
(Appellant)		(Respondent)
C.O Nos.4 & 5/Hyd/2021 (Arising out of ITA Nos.579 & 580/Hyd/2018)		
Assessment Years: 2012-13 & 2013-14		
PCL Intertech Lenhydro Consortium JV, Hyderabad PAN:AAGFP1664B	Vs.	Asstt. Commissioner of Income Tax, Circle 5(1) Hyderabad
(Appellant)		(Respondent)
Revenue by:	Sri Sunil Kumar Pandey, DR	
Assessee by:	Sri Sashank Dundu	
Date of hearing:	05/04/2021	
Date of pronouncement:	22/04/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

The above appeals are filed by the Revenue for the A.Ys 2012-13 and 2013-14, while the assessee has filed cross objections for both the years.

2. Brief facts of the case are that the assessee company, a JV engaged in the business of civil contracts, filed its return of income electronically for the above A.Ys. During the assessment

proceedings u/s 143(3) of the Act, it was noticed that the assessee was awarded a contract by Tehri Development Corpn. Ltd to execute civil works, dam slip way and power houses of KoteswarHEP vide tender No.THDS/RKSH/CD-197 and the members of the Jt. Venture were Progressive Constructions Ltd (50%) Hyderabad, and Intertech Lenhydro Consortium Russia (Foreign Company)(50%). The Assessing Officer observed that in the computation of total income, the assessee has declared gross receipts and estimated the profit thereon @2%. The assessee, vide letter dated 9.2.2015, submitted that the Jt.Venture has not maintained any books of account. The Assessing Officer observed certain discrepancies in Annexure to Form 3CB. The Assessing Officer also observed that the assessee has neither maintained books of account nor prepared any financial statements, P&L A/c and Balance Sheet and that the gross receipts are taken from Form 26AS. Therefore, the Assessing Officer was of the opinion that it is not clear as to which member of the Jt. Venture has executed the work and whether the work has really been carried out by the assessee and as to how the receipts are received and expenditure is incurred etc. Observing that the receipts are stated to have been credited by THDC Ltd to the A/c of the assessee which is authenticated by Form 26AS, he held that the income from these receipts are to be assessed as income of the assessee. He observed that the assessee has estimated the total income @2% of gross receipts, but since it was not clear as who has carried out the work, the Assessing Officer was of the opinion that the estimation of income at @2% of the gross receipts is too low. Therefore, he estimated the income @6% of the gross receipts net of all expenses.

3. Aggrieved by this order, the assessee preferred an appeal before the CIT (A), who, following his own order for the A.Y 2011-12, estimated the profit at 3% of the gross receipts. Against this order of the CIT (A), the Revenue is in appeal before us while the assessee has filed the cross objection seeking a direction that the income be estimated @2% of the gross receipts as done in the earlier A.Ys.

4. The learned DR supported the assessment order while the learned Counsel for the assessee relied upon the order of the ITAT in assessee's own case for the A.Y 2009-10 wherein, ITAT has directed the Assessing Officer to estimate the income of the assessee at 2% of the gross receipts instead of 6% confirmed by the CIT(A) in that year.

5. Having regard to the rival contentions and the material on record, we find that this issue has been coming up before the Revenue Authorities from the A.Y 2003-04 onwards. It is submitted by the learned Counsel for the assessee that in these A.Ys i.e. A.Y 2003-04 onwards, the Assessing Officer has estimated the income of the assessee @2% of the gross receipts. It was only in A.Y 2009-10 that the Assessing Officer has estimated the income @6% of the gross receipts and this Tribunal, after considering the estimates made by the Assessing Officer in the earlier years, had directed the Assessing Officer to estimate the income for A.Y 2009-10 also @2% of the gross receipts. It is also submitted that for the A.Y 2010-11, the Assessing Officer, himself had estimated the income at 2% of the gross receipts. The A.Ys before us are the immediately subsequent A.Ys i.e. 2012-13 and 2013-14, We find that there is no material difference between the

earlier assessment years and the A.Ys before us, except for the Assessing Officer stating that in the absence of details/information, it is presumed that the Jt. Venture itself has executed the work. However, we find that the project is a long gestation project and it cannot be that in some years, one of the constituents has executed the project and in other years, the assessee JV has executed the work. In our opinion, the Assessing Officer has to verify the fact as to who has executed the work and recompute the income in accordance with law. He cannot estimate the income without any basis.

6. In the result, Revenue's appeals as well as the C.Os filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 22nd April, 2021.

Sd/-

Sd/-

(LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	(P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 22nd April, 2021.

Vinodan/sps

Copy to:

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1	ACIT/Dy.CIT, Circle 5(1), 3 rd Floor, D Block, IT Towers, Hyderabad
2	PCL Intertech Lenhydro Consortium JV, Flat No.65A, Ground Floor, Raghava Ratna Towers, Chirag Ali Lane, Abids, Hyderabad
3	CIT (A)- 4, Hyderabad
4	Pr. CIT -4, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By order