

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

**(Through Video Conference)**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1962/Hyd./2018  
A.Y : 2010-11**

ACIT, Circle 1  
Kurnool

**vs.** M/s Sri Subrahmaneswara Transport Contractors  
Koilkuntla

[PAN: AACFV1439L]

(Appellant)

(Respondent)

For Revenue: Shri Rohit Muzumdar, D.R.  
For Assessee: Shri S. Rama Rao, Adv.

Date of Hearing : 08/06/2021  
Date of Pronouncement : 17/08/2021

**ORDER**

**PER S.S. GODARA, J.M.**

This Revenue's appeal for A.Y. 2010-11 arises against the CIT(A), Kurnool's order dated 03.08.2018 passed in case no. 0033/2015-16, involving proceedings u/s 143 (3) rws 147 of the Income Tax Act, 1961 [ in short 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue has pleaded the following twin substantive grounds in the instant appeal

*“2. The Ld.CIT(A) erred in restricting the estimation of income @ 3% of gross receipts in the absence of vouchers and bills for expenditure incurred. The hon’ble ITAT , A Bench, Hyderabad in the case of M/s Sri Sai Ram Transport vs Dept of Income tax vide ITA no 102/Hyd/2013 wherein it was upheld to estimate income from transport business @ 5%.*

*3. Whether the LdCIT(A) is correct in allowing the payments of interest and salary to the partner as per sec. 40(b) of the Act when it was held in the case of Indwell Constructions vs CIT 232 ITR 776 (AP) that when an estimation of income is made it is substitution of income computed in accordance with the provisions contained in sec30 to 43D of the Act and no addition/deletion can be made to estimation of income.”*

3. Coming to the former substantive ground, the revenue’s only case is that the CIT(A) has erred in law and on facts in restricting assessee’s estimation of income @ 3% only than that @ 12.5% in the course of assessment dated 29.3.2015. It quotes this tribunal’s order (supra) that the impugned estimation ought to have been upheld to the extent of 5%. We find no merit in Revenue’s instant first substantive grievance since an estimation of profit component is based on peculiar facts of the case which is not a binding judicial precedent as per hon’ble jurisdictional high court’s decision in CIT vs BR Constructions (1993) 202 ITR 222 (AP). We thus decline Revenue’s instant first and foremost grievance.

4. Next comes the Revenue’s latter argument that assessee is not entitled for sec.40(b) interest and salary to partner(s) once its books have been rejected as per hon’ble jurisdictional high court’s decision (supra). The same is also found carrying no substance as their lordships have never dealt with an instance of a statutory deduction u/s 40(b) of the Act. We rather find that the case law CIT vs. Vijay Constructions 213 CTR 105 (Alla) holds that a statutory deduction not to be disallowed merely because the assessee’s books

have been rejected. We thus reflect Revenue's instant latter substantive ground as well.

5. No other argument has been raised before us.

This Revenue's appeal is accordingly dismissed.

Pronounced in Open Court on 17<sup>th</sup> August, 2021.

**Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER**

**Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER**

Dated: the 17<sup>th</sup> August, 2021.

\* gmv

Copy of the Order forwarded to:

1. ACIT, Circle 1, Kurnool.
2. M/s Sri Subramaneswara Transport Contractors, 10-62-1, Bus Stand Road, Koilakuntla 518 134.
3. ACIT, Range 1, Kurnool .
4. CIT(A), Kurnool
5. Pr.CIT, Kurnool
6. DR, ITAT, Hyderabad.
7. Guard File.