

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT 'SMC' BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.184/VNS/2019  
Assessment Year: 2010-11**

Prabhakar Upadhyay, Village-Bijarwa P.O.- Bankat Teh- Sagri Distt-Azamgarh, U.P. PAN-AAUPU7174P	v.	Income Tax Officer Ward-2, Azamgarh, U.P.
(Appellant)		(Respondent)

Appellant by:	Mr. Vinod Kumar Sharma, Adv
Respondent by:	Mr. A.K. Singh, Sr. D.R.
Date of hearing:	22.03.2022
Date of pronouncement:	22.03.2022

**ORDER**

**SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

This appeal by the assessee is directed against the order dated 25.06.2019 of CIT(A), Gorakhpur for the assessment year 2010-11. The assessee has raised the following grounds:-

- "1. That the assessee is a civil contractor. During the year in consideration, I have received a payment from Zila Panchayat Azamgarh Rs. 56,89,232.00. The Uppar Mukhiya Adhikari Zila Panchayat has issued a certificate in from No. 16 A where in the total payment Rs. 56,89,232.00. The Zila Panchayat has deducted Rs. 1,70,966.00 as a vat and net contract receipt was Rs. 55,18,266.00. The assessment has been made on the net income of Rs. 6,32,961.00 and the total income where by worked out as under:-
- |    |   |             |                 |
|----|---|-------------|-----------------|
| 2. | Return Income   | 2,80,620.00 |                 |
|    | +Deduction u/s 80C of chapter VIA   | 1,00,000.00 | Rs. 3,80,620.00 |
| 3. | Addition on Account of bogus sundry creditor  |             | Rs. 3,07,341.00 |
| 4. | Disallowance of (out of material purchase,<br>Salary and wages and miscellaneous expense) |             | Rs. 45,000.00   |
|    | Total   |             | Rs. 7,32,961.00 |
|    | Less: Bank interest   | 16,576.00   |                 |
|    | +Deduction under section 80D C of chapter VI  | 1,00,000.00 | Rs. 1,16,576.00 |
|    | Net Contract Income   |             | Rs. 6,16,385.00 |

*The net contract Income assessed Rs. 7,16,385.00 gives N.P. rate 12.98% on 5518266.00*

*(5689233-170966 vat)*

*That the Id AO was not justified in adding Rs. 3,07,341.0 and Rs. 45000.00 (32000.00 material purchase + 8000 out of salary and wages + 5000.00 out of miscellaneous expenses). Which is bad in law and without proper appreciated of facts and liable to be detected.*

*That the CIT(A) has erred in confirming the order of the Assessing Officer."*

2. As it is evident from the grounds of appeal that the assessee challenged the two additions one is on account of undisclosed turnover / receipts found deposited in the bank account and another is regarding disallowance of certain expenses for want of vouchers. The assessee has filed his return of income on 25.09.2010 declaring total income of Rs. 2,80,620/- and agricultural income of Rs. 50,000/-. The return was processed and a credit of TDS of Rs. 1,38,024/- was allowed to the assessee in the proceedings under section 154. Thereafter, the case was selected for scrutiny. The assessee is a civil contractor and shown the net profit @ 6.96% on the gross receipts of 52,29,132/-. During the scrutiny assessment, the Assessing Officer noted that as per the bank account statement of the assessee, the assessee received the payment from Uppar Mukhiya Adhikari, Zila Panchayat, Azamgarh of Rs. 56,89,232/-. When the assessee was confronted with this fact, the assessee explained that due to typing mistake in the trading and profit and loss account, the gross receipts to the tune of Rs. 4,60,100/- could not be added. Thus, the assessee admitted the understatement of gross receipts in the books of accounts in comparison to the actual receipts which is a matter of record. The Assessing Officer after allowing the expenditure of Rs. 1,52,659/- added the balance amount of Rs. 307,341/- to the income of the assessee. The assessee challenged the action of the Assessing Officer before the CIT(A), but could not succeed.

3. Before the Tribunal, the learned AR of the assessee has submitted that once this amount is accepted as gross receipts of the assessee then the profit element in the same can be added to the income of the assessee and not the entire amount

after allowing the same expenditure. The learned AR has further submitted that the Assessing Officer has treated the sundry creditors as bogus while making this addition which is not justified and liable to be deleted. He has pleaded that the net profit may be applied on this amount of Rs. 4,60,000/- instead of making the adhoc addition of Rs. 307,341/-

4. On the other hand, the learned DR has submitted that since it is a suppressed turnover / receipt therefore, the entire amount is liable to be added to the income of the assessee as the assessee has already claimed all the expenditure in the books of accounts. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. At the outset, it is noted that the assessee has accepted the suppression of gross contract receipts as it was received from the Government Department and reflected in the bank account of the assessee. The assessee himself has accepted this fact of understatement of gross receipts in the profit and loss account. Even otherwise when the receipts are received from the Government Department and found credited in the bank account of the assessee, no dispute remains on this fact. However, once the Assessing Officer has accepted this amount of gross receipts of the assessee then only the gross profit rate can be added to the total income of the assessee. The other expenditures cannot be allowed against this receipt as remains same and already debited to the profit and loss account. The assessee has tried to claim the expenditure by referring to the sundry creditors. Though the Assessing Officer has not made any addition of sundry creditors however, the entire receipt cannot be added to the income of the assessee and only the gross profit would be reasonable and proper to be taken as income of the assessee on this suppressed contract receipts. The assessee though claimed the net profit to be added to the income however, in case of suppressed contract receipts the income will be the profit element being the gross profit and not the net profit. Accordingly, the

Assessing Officer is directed to apply the gross profit on Rs. 4,60,100/- for making the additions on this account.

6. As regards, the disallowance of Rs. 45,000/- towards the material purchased, salary wages and misc. expenses, it is noted that the Assessing Officer has made a very reasonable disallowance against the total claim of 48.5 Lacs in respect of these three items. Thus, Rs. 45,000/- comes even less than 1% of the total claim. The assessee has not disputed that the Assessing Officer called for the complete details of the material purchased, copy of account and supporting vouchers alongwith the ledger account of other expenditure under the head salary wages and misc. expenses but the assessee failed to produce the supporting bills and vouchers in respect of these expenses. Therefore, disallowance made by the Assessing Officer is found to be very reasonable and does not require any interference. Accordingly, the same is upheld.

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

Order pronounced in the open Court after conclusion of hearing on 22.03.2022.

***Sd/-***  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

DATED: 22/03/2022

Varanasi

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A), Varanasi
4. CIT
5. DR

By order  
Assistant Registrar

