

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA Nos. 854/Ahd/2019
Assessment Year 2010-11**

Kailash Sukhlal Mandal B-12, Bhagyodaya Society Part-3, Nr. Shivnagar, Nr. Chanakyapuri Bridge, Ghatlodia, Ahmedabad- 380061 PAN: AGIPM8794P (Appellant)	Vs	The ITO, Ward-4(2)(2), Ahmedabad (Respondent)
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**Appellant by : Shri S. N. Divatia, A.R.
Respondent by : Shri Alpesh Parmar, Sr. D.R.**

Date of hearing : 07-04-2022
Date of pronouncement : 22-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad, (in short referred to as CIT(A)), dated 30-11-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2010-11.

2. The solitary grievance of the assessee is against the estimation of the profits earned by the assessee, which the A.O. had estimated at 20% of the gross receipts and which was confirmed by the Ld. CIT(A), despite the assessee pleading that the same be restricted to 8% in view of profits consistently returned in the preceding and succeeding years.

2.1. The grounds raised by the assessee reads as under:

1.1 The order passed u/s 250 on 30.11.2018 for A.Y.2010-11 by CIT(A)-4, A'bad upholding the addition of Rs.10,93,099/- on account of estimating profit at 20% of contract receipts is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowance.

2.1 The Ld. CIT(A) has grievously erred in law and on facts in confirming addition of Rs.10,93,099/- on account of estimating profit at 20% of contract receipts.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld addition on account of estimating profit at 20% of contract receipts.

2.3 The observations made by CIT(A) in this regard are not admitted and contrary to the facts of the case as well as law.

It is, therefore, prayed that the addition of Rs.10,93,099/- estimated at 20% of contract receipts upheld by the CIT(A) may kindly be deleted.

3. The facts leading to the present case are that on the basis of AIR information in respect of the assessee that the assessee had made contract receipt of Rs. 54,65,499/- during the year, but had not filed any return of income, the case of the assessee was reopened u/s. 147 of the Act.

4. None appeared on behalf of the assessee despite repeated notices sent. The A.O. accordingly estimated the income from the contractual receipt of the assessee @ 20%, resulting in addition of Rs. 10,93,099/- to the income of the assessee under the head Income from Business. Before the Ld. CIT(A), the assessee contended that in view of the assessee having consistently returned 8% net profit in the preceding and succeeding years, the income be estimated @ 8% of the contractual receipt. The details submitted by the assessee was as under:

SrNo.	A.Y.	Gross Receipt	Net Profit	Net Profit %	Date of Filing
1	2008-09	28,16,3507-	2,25,3087-	8 %	27.01.2009
2	2012-13	26,69,3757-	2,13,5507-	8%	14.02.2014
3	2013-14	43,50,0007-	3,48,0007-	8%	14.02.2014

5. The Id. CIT(A) however was not convinced with the explanation of the assessee and upheld the estimation of income from the contractual receipts @20%, holding at page 6 of his order as under:

"It is seen that the turn over for A.Y. 2008-09 is less than Rs.40 lacs. However, returns for A.Y. 2012-13 & 2013-14 are not filed as per time limit of section 139(1). There is no audit report for A.Y. 2013-14 as per provisions of section 44AB. Therefore, it is very clear that the appellant is trying to make out a case u/s.44AD though the turnover for A.Y. 2010-11 and 2013-14 is not as per prescribed parameters. In the circumstances, it is considered a self serving statement to get benefit somehow or the other at the cost of revenue. When the turnover for A.Y. 2010-11 is at Rs.54,65,499/-, how the 8% criteria of section 44AD can be made applicable. Also how books of accounts have not been maintained for A.Y. 2010-11. It can be clearly concluded that the appellant is not maintaining books of accounts even upto A.Y. 2013-14. Therefore, the argument

of the appellant are without any basis. It is noteworthy that decision not to confirm the addition of Rs.9,29,651/- has already been taken. In view of all the facts on record I am of the opinion that addition of Rs. 10,93,099/- as per para 3 of assessment order is judicious and need to be confirmed. Therefore, the addition of Rs.10,93,099/- is hereby confirmed and ground no. iv is partly allowed. Therefore, the assessed income should be at Rs.10,93,099/-instead Rs.20,22,750/-.

6. We have heard both the parties and we have gone through the orders of the authorities below. The solitary issue for determination is the net profit rate to be applied for estimation of income from the contractual receipts of the assessee during the year amounting to Rs. 54,65,499/-. We find from the orders of the authorities below that there is not justifiable basis given either by A.O. or Ld.CIT(A) for applying the rate of 20% for estimating profits of the contractual receipt. On the other hand, it has been pointed out by the Id. Counsel for the assessee, that the legislature has considered 8% net profit rate to be appropriate for estimating profits as per the provisions in the statute relating to presumptive taxation on Civil Contracts as provided u/s. 44AD of the Act. No doubt the said provision is applicable only with respect to turnovers up to 40 lakhs but it cannot be ignored that the 8% rate has been considered to be appropriate in such line of business and therefore can be taken as a base for determining the appropriate profit rate for turnovers exceeding 40 lakhs also as in the present case. In the impugned case, we find that the turnover just exceeds 40 lakhs limits specified u/s. 44AD of the Act, being Rs. 54 lakhs odd. Considering the same the rate of 20% applied by the Revenue authorities,

without any basis, is totally unjustified and in our view the 8% rate is justified.

7. In view of the above, we direct the addition on account of estimation of net profit to be restricted to 8% of the receipts of the assessee.

8. The grounds of appeal raised by the assessee are allowed in above terms.

9. In effect appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 22-06-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER *True Copy*
Ahmedabad : Dated 22/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद