

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos. 518 & 519/Hyd/2021
(निर्धारण वर्ष / Assessment Year: 2012-13 & 2017-18)

MAA Highways,
Khammam
[PAN No. AAIFM0756B]

Asst.Commissioner of Income
Tax,
Vs. Central Circle-2(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P.Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 29/06/2022
घोषणा की तारीख/Pronouncement on: 06/07/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the orders passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)") in the case of M/s. MAA Highways ("the assessee") for the AYs. 2012-13 & 2017-18, assessee filed these appeals.

2. Insofar as this appeal for the assessment year 2012-13 is concerned, the assessee agitates against the action of the Ld. CIT(A) in not deleting in toto the addition of Rs. 17,66,735/- made on estimate of profit on gross receipts and also Rs. 7,37,935/- towards other income shown in the P&L Account of the assessee. In respect of the addition of Rs. 17,66,735/- the brief facts are that as per form 26AS, the gross contract receipts of the assessee were Rs. 14,04,98,322/-, which was revised subsequently Rs. 2,20,84,190/-. The assessee, however, offered only a sum of Rs. 1,42,79,014/- in the return. According to the learned Assessing Officer the assessee failed to explain the discrepancy in the gross receipts between the form 26AS and the amount shown in the books of accounts and also that the assessee could not reconcile the said discrepancy with the books of M/s. Madhucon Projects Limited. Learned Assessing Officer, therefore, estimated the income on the amount under discrepancy at 8% on gross receipts and made an addition of Rs. 17,66,735/-.

3. Before the Ld. CIT(A) it was pleaded that on an earlier occasion in assessee's own case for the assessment year 2007-08 there was an addition on this score by estimated 12.5% by the learned Assessing Officer which the Ld. CIT(A), in appeal, reduced to 8% of gross receipts as the assessee is a subcontractor and also directed that the depreciation and the deduction be allowed thereafter. When the assessee preferred appeal before the Tribunal, vide order dated 30/07/2013 in ITA No. 54/Hyd/2013 and batch the Tribunal held that the income be estimated at 5% and no further deductions are to be allowed.

4. Ld. CIT(A), however, found from the 1st appellate order in assessee's own case for the assessment year 2008-09 that for the assessment year

2007-08, though the Tribunal estimated the income at 5% of the gross receipts, but subsequently there was a search and in the consequential assessment under section 153A of the Income Tax Act, 1961 (for short "the Act"), the 1st appellate authority estimated the same at 8% without any other deduction. Inasmuch as there are 2 orders for the same assessment year, one estimating at 5% by the Tribunal and another estimating at 8% by the First Appellate Authority after the search, Ld. CIT(A), for the assessment year 2008-09 confirmed the estimation at 8% of the turnover.

5. For the assessment year 2012-13, the Ld. CIT(A) followed his predecessors order for the assessment year 2008-09 and upheld the estimate at 8% and that is the reason why the assessee is before us in this appeal. Ld. AR submitted that for the assessment year 2007-08 the Tribunal estimated the income of the assessee at 5% of the gross receipts and there is no view to the contrary taken by the Tribunal and therefore the same may be followed for this year also.

6. We have gone through the record in the light of the submissions made on either side. After considering the nature of business of the assessee and in the light of the attendant facts, the Tribunal has taken a conscious decision that the estimate at 5% of the gross receipts of the assessee. There is no change in the business of the assessee and consequently there is no change in the gross profit that could be earned by the assessee in terms of percentage to the gross receipts.

7. In the circumstances, we are of the considered opinion that following the view taken by the Tribunal for the assessment year 2007-08 and also having regard to other attendant circumstances like market

competition, high fluctuations, shortage of liquidity etc. to estimate the income of the assessee at 5% would meet the ends of justice. With this view of the matter, we allow the contentions of the assessee and direct that the income of the assessee may be estimated at 5% of the gross receipts for the assessment year 2012-13 also.

8. In respect of the addition of Rs. 7,37,935/- towards other income as shown in the P&L Account, it could be seen from the impugned order that the Ld. CIT(A) directed the learned Assessing Officer to verify the nature of income of Rs. 7,37,935/- and if it is found that this is a business receipt then there cannot be a separate addition after estimating the profit in relation to the gross receipts. He further directed that if such an amount is not to be found as business receipt then it has to be added separately under the head of 'other income'. With this observation Ld. CIT(A) allowed the grounds. We do not see any reason to interfere with this observation of the Ld. CIT(A) hence the grounds relating to this issue are dismissed.

A.Y. 2017-18:

9. For this assessment year only issue involved is in respect of the estimate of business income. Learned Assessing Officer made an addition of Rs. 28,52,083/- on the ground that the assessee declared Rs. 2,85,20,832/- as 'other operating income' in the P&L Account and arrived at a net profit of Rs. 17,11,250/-, but the assessee did not furnish any books of accounts with supporting vouchers and, therefore, the income was estimated at 10% of the receipts to quantify the addition at Rs. 28,52,083/-.

10. Before the Ld. CIT(A) assessee pleaded that estimation of business income at 10% of total Revenue is very harsh and that too without any material. According to the assessee the business in which the assessee is dealing is executing civil contracts, which involves high competition, high fluctuations with regard to price variance, shortage of liquidity, etc., and the AO failed to consider the same. Assessee pleaded for the estimated 5% on the gross receipts.

11. Ld. CIT(A), while referring to the view taken in assessee's own case for the assessment year 2008-09 by his predecessor took the view that estimate of income at 8% on gross receipts would be proper. He also referred to the order of the 1st appellate authority for the assessment year 2012-13 to justify this conclusion. On this premise, Ld. CIT(A) estimated the income of the assessee at Rs. 22,81,666/-.

12. Aggrieved by the same, the assessee is before us in this appeal pleading for estimation of the income at 5% on the gross receipts and for this purpose placed reliance on the view taken by the Tribunal in assessee's own case for the assessment year 2007-08.

13. In the preceding paragraphs, while dealing with the issue for the assessment year 2012-13, we reached a conclusion that the estimate of income of the assessee at 5% of the gross receipts would be proper and would meet the ends of justice, having regard to the nature of business and the other attendant circumstances like market competition, high fluctuations, shortage of liquidity etc. With this view of the matter, we allow the contentions of the assessee and direct that the income of the

assessee may be estimated at 5% of the gross receipts for the assessment year 2017-18 also.

14. In the result, appeal of the assessee for the assessment year 2012-13 is allowed in part and appeal for the assessment year 2017-18 is allowed.

Order pronounced in the open court on this the 6th day of July,
2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Hyderabad,
Dated: 06/07/2022

Copy forwarded to:

1. MAA Highways, C/o. P.Murali & Co., Chartered Accountants,
6-3-655/2/3, Somajiguda, Hyderabad.
2. Asst.Commissioner of Income Tax, Central Circle-2(1), Hyderabad.
3. The CIT(Appeals)-12, Hyderabad.
4. The Pr.CIT(Central)-Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD