

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

ITA No. 3482/DEL/2018 [A.Y 2012-13]

The Dy.C.I.T
Circle -1
Noida

Vs.

M/s Induni Era Joint Venture
B-24, Sector 3, Noida

PAN: AAAAI 1976 L

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri Anuj Garg, Sr. DR

Date of Hearing : 18.07.2022

Date of Pronouncement : 18.07.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
CIT(A) - 1, Noida dated 27.10.2017 pertaining to Assessment Year 2012-
13.

2. The grievances of the Revenue read as under:

"1. The CIT(Appeals) has erred in law and on facts by deleting the additions of Rs. 7,24,64,418/- made by the AO on account of taking income of the assessee @ 8% of total receipts, without appreciating the facts that the assessee has shown income @ 0.27% only from the construction of road project, which is against the market trend of more than @ 8%.

2. That the CIT(A) has erred in law and on facts by deleting the addition made by AO without appreciating the fact that assessee has paid entire amount to one of the constituents and the concept of parity is missing, if the comparison is made between both the constituents of the assessee, Joint Venture.

3. That the CIT(A) has erred in law and on facts by deleting the addition made by AO without appreciating the facts that the assessee has made no payments to the foreign constituents in lieu of services rendered by them, thus the service tax has been avoided, which is against the law.

4. The CIT(A) has erred in law and on facts by deleting the addition made by AO without considering the fact that the assessee did not produce any books of accounts along with the detailed vouchers etc. in support of its claim.

5. The appellant craves to leave, add alter and amend an of the grounds of appeal on or before hearing.

6. That the order of CIT(appeals) being erroneous in law and on facts deserves to be set aside/cancelled and the order of the AO to be restored

3. None appeared on behalf of the assessee. We decided to proceed ex-parte. The ld. DR was heard at length, who placed strong reliance on the order of the Assessing Officer. The ld. DR referred to the relevant observations of the Assessing Officer.

4. Having heard the ld. DR, we have carefully perused the orders of the authorities below.

5. Briefly stated, the facts of the case are that the assessee is an AOP and is engaged in the business of civil construction on contract basis. The assessee was awarded civil construction contract from Hyderabad Ring Road Project Pvt Ltd for construction of outer ring road to Hyderabad City.

6. Since the assessee did not have requisite infrastructure and expertise to execute this project, it awarded this contract to one of its constituents M/s Era Infra Engineering Limited.

7. During the year under consideration, the assessee has shown contract revenue of Rs. 92,13,37,448/- from this project and claimed contract expenses of Rs. 92,00,20,931/- towards this project which was paid to M/s Era Infra Engineering Limited.

8. During the course of scrutiny assessment proceedings, the assessee furnished all relevant details called for by the Assessing Officer. On perusal of Form 26AS, the Assessing Officer found that the total amount of Rs. 64.48 crores was credited as receipts from contract work. But in the profit and loss account, the assessee has shown contract receipts of Rs. 92.13 crores. The assessee was asked to reconcile the difference.

9. A proper reconciliation was filed and examined by the Assessing Officer. The Assessing Officer did not find any error or infirmity in the reconciliation statement submitted by the assessee. However, the Assessing Officer was of the firm belief that profit returned by the

assessee on its total contract receipts is very low and referring to certain judicial decisions, the Assessing Officer came to the conclusion that the assessee has diverted all its income to one of its constituents, namely, M/s Era Infra Engineering Limited.

10. The Assessing Officer went on to assume the profit @ 8% of the contract receipts and made addition of Rs. 7,24,64,418/-.

11. Assessment was challenged before the ld. CIT(A).

12. It was strongly submitted before the ld. CIT(A) that the Assessing Officer, without rejecting the books of account, estimated the profit which is in gross violation of provisions of law. It was explained to the ld. CIT(A) that the awarded contract was spread into four Assessment Years during which project undertaken by the assessee was completed.

13. Necessary details were furnished before the ld. CIT(A). After considering the facts and submissions, the ld. CIT(A) found that the project undertaken by the assessee was completed in four Assessment Years and components of income involved was spread over all the four Assessment Years. It was found that the assessments of Assessment

Years 2009-10 to 2012-13 were all completed u/s 143(3) of the Act. In fact, assessments of Assessment Years 2009-10 to 2011-12 were originally scrutinized by the Assessing Officer u/s 143(3) of the Act and returned income was accepted.

14. Based upon certain presumptions, assessments for Assessment Years 2009-10 and 2010-11 were reopened u/s 147 of the Act and in re-assessment, after thorough scrutiny, returned income was accepted.

15. For Assessment Year 2011-12, assessment was originally completed u/s 143(3) of the Act, but was subsequently revised by order of the Id. CIT, Noida u/s 263 of the Act wherein the Id. CIT directed the Assessing Officer to reframe the assessment after complying with the directions of the Id. CIT, Noida.

16. With this factual background, the Id. CIT(A) was convinced that the Assessing Officer grossly erred in estimating the income of the assessee.

17. Further, as mentioned elsewhere, the Assessing Officer has not pointed out any error or infirmity in the books of account maintained by the assessee and without rejecting the books of account, we do not find any merit in the estimation of income by the Assessing Officer.

18. Considering the totality of the facts, we decline to interfere with the findings of the ld. CIT(A).

19. In the result, the appeal of the Revenue in ITA No. 3482/DEL/2018 is dismissed.

The order is pronounced in the open court on 18.07.2022.

Sd/-

**[N.K. CHOUDHRY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 18th July, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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