

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 147/Rjt/2021
Assessment Year 2010-11**

Shri Lakhman Arjan Karmur, Yogeshwarnagar, Dhanpur, Jam Khambhalia, Dev Bhumi Dwarka PAN: BHDPK6392Q (Appellant)	Vs	Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi (Respondent)
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**Assessee by: Shri Chetan Agarwal, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 07-07-2022
Date of pronouncement : 21-09-2022

आदेश/ORDER

PER BENCH:-

This is an appeal filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 28-10-2021, in proceedings under section 144 of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has taken the following grounds of appeal:-

“1. Ld. CIT(A) erred in law as well as in fact in estimating net profit by adopting profit rate of 8% on gross receipts of Rs. 1,12,92,313/-.”

3. The brief facts in relation to this case are that the assessee is a civil contractor and executed works contracts of ₹ 1,12,92,131/- during the year under consideration. The same was also reflected in form number 26AS along with TDS of ₹ 1,27,507/-. However, the assessee did not file its return of income and subsequently assessment was completed under section 144 r.w.s 147 of the Act making addition of the entire gross receipts of ₹ 1,12,92,131/- as reflected in form 26AS.

4. In appeal before Ld. CIT(Appeals), the assessee submitted that only the profit embedded in the contractual receipts can be subject to tax and it would be capricious to tax entire receipts as income of the assessee. The assessee also filed comparable cases relating to other contractors and submitted that the comparative profit rate of the contractors in the similar line of business is lower than 5% (ranging between 1.3 to 5% of gross receipts). The Ld. CIT(Appeals), in light of the fact that the assessee did not file any evidence in support of the expenses incurred for carrying out the contract work, and had only relied on examples of assessee engaged in similar line of business, on a fair estimate, restricted the profit to 8% of total receipts u/s 44AD of the Act. While passing the order, Ld. CIT(Appeals) made following observations”

“3.3. I have considered the matter. The assessee was executing civil construction work and renting out of vehicles. The fact of assessee doing contract work is in the knowledge of the AO. I have seen 26AS.

Out of total receipt of Rs.1,12,92,131/- tax was deducted u/s 194C for a sum of Rs. 1,04,91,762/- and u/s 194I for Rs. 8,00,369/-. Thought assessee did not produce any books of accounts or record showing expenses, in that line of business, substantial expenses must have been incurred. Even if income is assessed u/s 144, it has to be a fair estimate. There is plethora of case laws wherein it has been held that the whole trading receipt cannot be assessed as income. The appellant had pointed to some decisions of even Hon'ble Jurisdictional Gujarat High Court in this regard.

3.3.1. In the written submission, assessee gave examples of three assessee's claimed to be in same line of business whose net profit, for three years (2009-10 to 2011-12) were found to be less than 5%. But this claim is not substantiated by audited statements even returns of income or any other substantiating evidence. Therefore, the profit rates of those assessee cannot be taken into consideration here.

3.3.2. In absence of any record to serve as basis for estimating the income, section 44AD serves as guide though assessee's business might not have been eligible for availing provision of section 44AD. Considering the absence of any evidences, it will be only fair to estimate the income at 8% on contract receipt. This rate will be applicable in case of Rs.8,00,369/- received on hiring of vehicles since section 44AE cannot be applied in absence of facts regarding vehicles hired out by assessee. After this, addition will be restricted to Rs.9,03,370/-. This, in my considered view is a reasonable estimate than that of assessing the whole contract receipt as income.”

5. Before us, counsel for the assessee reiterated the submissions made before Ld. CIT(Appeals) and submitted that even 8% of gross receipts is excessive in the assessee's line of business. He submitted several instances in case of contractors engaged in similar line of business and submitted that the net profit in such line of business is less than 5% of the gross receipts. In response, DR submitted that estimation of net profit at 8% by Ld. CIT(Appeals) is very reasonable in the instant set of facts, especially when

the assessee has not brought forth any evidence in support of expenses incurred.

6. We have heard the rival contentions and perused the material on record. The assessee has not been able to bring forth any supporting evidences in respect of expenses incurred in earning the contractual income. The assessee has cited examples of assessee's in similar line of business and submitted that the profit margin in their case was less than 5%. However, since the assessee has been unable to submit any supporting evidences in respect of expenses before us, we are of the considered view that the Id. CIT(A) has been reasonable in estimating profit by apply the rate of 8%. In the result, we uphold the order of Id. CIT(A) in the instant set of facts.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21-09-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 21/09/2022

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

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

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

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot