

**IN THE INCOME TAX APPELLATE TRIBUNAL,
PATNA BENCH, PATNA (VIRTUAL HEARING AT KOLKATA)**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.200/PAT/2014
Assessment Year: 2005-06**

M/s. Kumar Construction P.O. Dumri Adda, P.S. Doriganj, Dist. Chapra. PAN: AAJFM 7295 G (Appellant)	Vs.	DCIT, Muzaffarpur Circle-2, (Respondent)
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Present for:

Appellant by : Smt. Archana Sharma, CA
Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 28.06.2022

Date of Pronouncement : 22.09.2022

ORDER

PER SONJOY SARMA, JM:

The captioned appeals preferred by the assessee for the A.Y. 2005-06 is directed against the order passed u/s 143(3) of the Income-tax Act, 1961 passed by OSD, CIT(A) dated 26.06.2014. The assessee has taken the following revised ground of appeal for A.Y. 2005-06 as under:

"i. The ld. Assessing Officer has assessed profit @ 8% of total gross receipts amount to Rs. 2,40,85,620/- amounting to Rs. 19,26,850/- and added back to assessee's income while computation of tax.

ii. Capital introduced by 6 partner's amounting to Rs. 12,20,000/- has been outrightly rejected by AO and added back to assessee's income while computation of tax.

iii. The respondent have rejected the books of accounts invoking the provision of section 145(3) and rejecting the books of accounts regularly maintained and holding that the audited books of accounts were not absolutely reliable.

So, we pray for consider the revised grounds stated above and grant relief for assessee's income @ 6% of the total receipts of Rs. 2,40,85,620/-."

2. Brief facts of the case are that the appellant assessee had filed its return for A.Y. 2005-06 on 29.10.2005 declaring income of Rs. 2,36,990/-. The case of the assessee was selected under scrutiny. The AO found that the books of accounts of the assessee were not properly maintained and not supported by evidence of expenses, no stock register was maintained by the assessee in respect of material purchased, consumed and the sundry creditors were not verifiable. Therefore, he rejected the books of accounts u/s 145(3) of the Act and determined the net profit by applying the net profit rate of 8% on gross receipts of Rs. 3,93,24,971/- after taking into account all expenses including depreciation claimed in the profit and loss accounts. However, doing so, he allowed salary and interest to partners amounting to Rs. 3,97,897/- therefrom. Since the assessee firm was reconstituted and seven partners had introduced Rs. 17,86,586/- towards their capital and out of seven partners did not file any documentary proof to explain the source of capital introduced by them. Therefore, the AO made an addition of Rs. 12,20,000/- as income of the firm and added to its total income. Against the above assessment order, assessee filed an appeal before the Id. CIT(A), Patna and the appeal of the assessee was dismissed by the Id. CIT(A) vide its order dated 04.12.2009. Against the order of Id. CIT(A), Patna dated 04.12.2009, assessee preferred an appeal before the ITAT vide order dated 21.02.2012, the Tribunal remitted the matter to the file of Id. CIT(A) to consider the issue afresh after giving one more opportunity to the assessee. In pursuance to that, the Id. CIT(A) passed an order vide order dated 26.06.2014 and the appeal of the assessee was dismissed for AY 2005-06.

3. Dissatisfied with the above order, the assessee preferred an appeal before the Tribunal raising twenty grounds of appeal. However, the AR of the assessee at the time of hearing before us submitted revised grounds of appeal for adjudication of matter and pray for considered the same and interest of justice, we allow the revised grounds of appeal. From the perusal of the grounds of appeal, the main grievance of the appellant assessee is against the assessment order passed by the AO and he had assessed the profit @ 8% of total gross receipt of Rs. 2,40,85,620/- and arrived at Rs. 19,26,850/- and

added back to the income of assessee while computation of income, another grievance is introduced capital by six partners amounting to Rs. 12,20,000/- has been out-rightly rejected by the ld. AO and added back to the income of the assessee while computation of taxable income of assessee. The ld. AR has submitted that since the books of accounts of the assessee rejected by AO by invoking the provision of section 145(3) and holding that the audited books of accounts were not absolutely reliable. As such the impugned order passed by the ld. CIT(A) is bad in law and unjustified, moreover, excessive under the facts and circumstances of the case, therefore, liable to be set aside. She further submitted that since the assessee is engaged in civil contract business executing govt. contracts on which the profit rate is not very high and work was assigned to the assessee on a very low profit margin and contracts has been accepted at the rate which is 14% lower than the rate specified. Further, the ld. AR submitted that considering such higher rate of income is very harsh and she further like to draw our attention that rate of 6% in civil contract business as reasonable and also taking into reference the following cases:

- "i. Metropolitan Engg. Co. Opt. Society Ltd. vs ACIT ITA No. 2172/Kol/2010.*
- ii. Pravin Pandurang Patil, Islampur in ITA No. 850/PN/08.*
- iii. ACIT Gandhidham Circle vs M/s. Ishwar Construction Co. Gandhidham, ITA No. 1140/RJT/2009."*

Therefore, to consider flat 8% income over the gross revenue is really harsh is unjustified and not as per the current industry norms. Therefore, taking into consideration, the above facts of the case, she submitted before the bench to provide relief to the assessee in respect of above issues.

4. We after considering the submission of the AR perusing the material on record and hearing the ld. DR, on this issue, we are of the view that flat 8% income over the gross revenue is unjustified and taking into consideration of the view taken by the coordinate bench, we restrict the net profit rate of 6% in civil contract business is a reasonable one and direct the AO to calculate the net profit of the assessee @ 6% in civil contract business of the assessee and determined tax on such gross receipt. Moreover, the issue in respect of addition u/s 68 for which assessee offers no

explanation before the AO about the nature and source of capital introduced by six partners namely:

<i>i. Sir Anil Kumar Singh</i>	<i>Rs. 70,000/-</i>
<i>ii. Sir Ramanuj Singh</i>	<i>Rs. 5,00,000/-</i>
<i>iii. Sri Laljee Nath Singh</i>	<i>Rs. 5,00,000/-</i>
<i>iv. Sri Prem Pradash Singh</i>	<i>Rs. 50,000/-</i>
<i>v. Sri Sayta Narain Singh</i>	<i>Rs. 50,000/-</i>
<i>vi. Sri Uma Shankar Singh</i>	<i>Rs. 50,000/-</i>

and the total amounting to Rs. 12,20,000/- has been out-rightly rejected by the AO and added back to the total income of the assessee, although the individual partner had submitted affidavit regarding introduction of individual capital and it has been certified by the auditor in the audit report also. However, the claim of the assessee rejected by the AO merely on the ground that capital has not been introduced through banking account is unjustified. Therefore, it is perverse and liable to be rejected and to substantiate the claim of assessee, the AR relied on the decision of CIT vs Anupam Udyog dated 21st December, 1982, 142 ITR 130 (Patna High Court), where Hon'ble High Court held that there are cash credit in the books of firm in the accounts of the individual partners and it is found as a fact that cash was received by the firm from its partners other than in absence of any material to indicate that there are the profits of the firm, the cash credits cannot be assessed in the hands of the firm though they may be assessed in the hands of individual partners. Further, the AR submitted that the AO had already rejected the books of accounts u/s 145(3) of the Act and income has been presumed on presumptive basis. Therefore, all the income expenses assets and liabilities have been accounted for and in such circumstances capital introduced by partners into firm's capital and added its total income of the firm is bad in law. Therefore, the contention of the AO is not justified and liable to be set aside.

5. We after considering the rival submission of the parties on this issue and material available on record as well as going through the Paper Book submitted by the assessee to substantiate its claim and also perusing the affidavit filed by the individual assessee in this regard and the order passed by the Hon'ble Patna High Court, we find force in

the submission made by the assessee. Therefore, we allow the claim of the assessee and directed the AO to delete the addition of Rs. 12,20,000/- in the hands of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.09.2022.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 22.09.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Kumar Construction.
2. The Respondent: DCIT, Circle-2, Muzaffarpur.
3. The CIT,
4. The CIT (A)
5. The DR Concerned Bench

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata