

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench,(Camp : Tirupati)**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.424/Hyd/2020		
Assessment Year: 2015-16		
Venkata Rami Reddy Constructions, Kadapa PAN:AAOFM4106D (Appellant)	Vs.	A.C.I.T. Circle 1(1) Kadapa (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri Jeeval Lal Lavidiya, DR	
Date of hearing:	24/11/2022	
Date of pronouncement:	29/11/2022	

**ORDER**

**Per Laliet Kumar, J.M**

This appeal filed by the assessee is directed against the order dated 13.03.2020 of the learned Pr. CIT, Tirupati relating to A.Y.2015-16. The grounds raised by the assessee is reproduced hereunder:

- “1. The order of the learned Principal Commissioner of Income Tax is not correct either in law or on facts and in both.*
- 2. The learned Principal Commissioner of Income Tax failed to appreciate the fact that the order u/s 143(3) is neither erroneous nor prejudicial to the interest of the revenue.*
- 3. In the facts & circumstances of the case, that the order of the learned Principal Commissioner of Income Tax in setting aside the order u/s 143(3), with a direction to the Assessing Officer to re-do the assessment de-novo, is beyond the scope of powers conferred u/s.263(1) of IT Act.*
- 4. The learned Principal Commissioner of Income Tax is not justified is not appreciating the submissions filed on merits, and further the*

*Principal Commissioner of Income Tax himself has not recorded any specific finding as to in what manner he found the Assessing officer's order to be erroneous in so far as it was prejudicial to the interest of the revenue.*

*5. In the facts and circumstances of the case, the Principal Commissioner of Income Tax is not justified in assuming jurisdiction u/s.263 in respect of issues which were 5 beyond the scope of the Assessing officer, while framing the original assessment under section 143(3) of the Act.*

*6. The Principal Commissioner of Income Tax is not justified in passing an order under section 263 in a limited scrutiny case where the Assessing Officer has discharged his obligations as per the Provisions of the IT Act and instructions of the CBDT.*

*7(a). In the facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax erred in law in assuming jurisdiction u/s 263 stating that (a) | compliance of Sec 40(a)(ia) was not examined by the Assessing officer, in a case where the books of accounts are not accepted and the estimation of income is resorted to.*

*7(b) In the facts and circumstances of the case and in law, the learned Pr. Commissioner of Income Tax failed to appreciate the settled legal position that the provisions of sec. 40(a) (ia) of the Act cannot be invoked to make disallowance, in cases where income is determined on estimation basis.*

*7(c) The Principal Commissioner of Income Tax failed to (C) appreciate the fact that the payments in question. as explained in submissions are not covered by Sec 40(a)a) and hence order u/s 263 is bad in law.*

*8. That on the facts and circumstances of the case and in law, the Principal Commissioner of Income Tax is not Justified in setting aside the Assessment order u/s. 143(3) Without recording any prima facie finding on the merits of the issues.*

*9. The learned Principal Commissioner of Income Tax failed to appreciate the legal provision that the directions issued in the order u/s 263 cannot extend the scope of enquires/issues warranted under Limited scrutiny.*

*10. In the facts and circumstances of the case. the learned Principal Commissioner of Income Tax is not justified in stating that the interest income from fixed deposits is to be taxed separately, without including it as part of Contract receipts for the purpose of estimation of income.*

*11. The appellant craves leave to add, amend or alter any of 11 the grounds at the time hearing of the appeal.”*

2. The case of the assessee before us that the learned PCIT had issued show-cause notice on 3 counts i.e. (i) the Assessing Officer has not examined the specific reasons for deduction of net profit from 8.25% in the financial year 2013-14 to 5.15% in the financial year 2014-15 (ii) the Assessing Officer has not made detailed enquiry and examination of other expenses especially the substantial amount of payments made to the persons namely M R Singals Vidya Engineering and Aviatronics System and applicability of the provisions of chapter XVIB r.w.s. 40(a)(ia) of the I.T. on the above payments and (iii) the Assessing Officer has not verified the applicability of TDS provisions in respect of the expenses such as interest and charges paid towards vehicle loan (Rs.82,323/-) and material inspection charges (Rs.2,29,315/-) and disallowance of the same u/s 40(a)(ia) of the I.T. Act.

3. In this regard the learned Counsel for the assessee submitted that in the assessment proceedings, the Assessing Officer has rejected the books of account of the assessee and thereafter estimated the income of the assessee at 6% of the contract receipts. Our attention was drawn on page 2 of the assessment order wherein the Assessing Officer has recorded about the estimation of the income. The contention of the learned AR before us that had the Assessing Officer estimated the income of the assessee then no other disallowance under Chapter XIVB under section 40(a)(ia) can be made. He has relied upon the decision of the Hon'ble jurisdictional High Court in the case of Indwell Constructions v. CIT (1998) 232 ITR 776 (A.P). He also relied upon the decision of the Hon'ble Rajasthan High Court in the case of Malpani House of Stones (365 ITR 385) Raj.) and also the decision of the Coordinate Bench in the case of M/s. KRR

Infra Projects Pvt Ltd in ITA Nos. 105 & 106/Hyd/2018 dated 23.08.2021).

4. The learned DR, on the other hand, relied upon the orders passed by the lower authorities.

5. We have heard the rival contentions and perused the material available on record. Admittedly, the income of the assessee was estimated by the Assessing Officer as is clear from the assessment order @ 6% of the contract receipts. However, the learned PCIT was of the opinion that instead of 6%, it should have been 8% and it was the contention of the learned PCIT that no reason whatsoever was given by the Assessing Officer while coming to the above said conclusion. In our considered opinion, the assessee has declared the total turnover in the year under consideration for Rs.9,98,48,978/- on which the Assessing Officer has estimated the income of the assessee at 6%. Para 2 of the assessment order, after rejecting the books of account . Assessing Officer in order has clearly mentioned that major portion of the expenses were incurred through self-made vouchers and this aspect was put to the assessee during course of the scrutiny assessment and it was made clear that the documents maintained by the assessee shall not be considered by the Assessing Officer for the purpose of computing the income of the assessee, thereafter Assessing Officer estimated the income under Income Tax Act 1961 @6% of the turnover . The learned PCIT was of the opinion that the income of the assessee should be estimated at 8% instead of 6%, however, no reason whatsoever were given for arriving at that conclusion. In our view, estimation of income is to be arrived by Assessing Officer on the basis of guess work, which in turn is based on nature of business of the assessee ,

past history and comparable instance of the same trade , profile of the assessee . No perfect yard stick was provided to estimate income of the assessee with arithmetical precision . In our view both the view i.e view of Assessing Officer and learned PCIT are possible views and once the Assessing Officer takes one possible view and estimate the income of the assessee, then it cannot be alleged that the order of the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. It is a trait law that where Assessing Officer has made enquiry on the issues during assessment proceedings, the assessment order cannot be subject of revision if the view taken by the Assessing Officer is one of the possible view.

The Supreme Court in the case of Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations:

*“Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed”*

5. With respect to the other issues viz., application of u/s 40(a)(ia). In this regard the assessee had submitted that the assessee were made to M R Singals Vidya Engineering and Aviatronics System for purchase , duly supported by invoice,

hence chapter XVIB r.w.s. 40(a)(ia) of the I.T. is not applicable. Assessee has also placed on record the invoices in support of that. Be that as it may, the law is clearly settled by the Hon'ble jurisdictional High Court as well as the Hon'ble Rajasthan High Court that section 40(a)(ia) is not attracted if the income of the assessee is estimated after rejecting the books of account. Interestingly, in one of the decisions passed by the Delhi Bench of the Tribunal in which the A.M is a signatory in the case of Labo Tek vs. Jt. CIT in ITA No.2109/Del/2015 it has been held as under:

*“6. Now, coming to the rate of profit to be adopted, we find the turnover of the assessee during the impugned year has gone up substantially. It has gone up to Rs.19.01 crore as against Rs.9.24 crore in the immediately preceding assessment year. When the turnover grows substantially, it is quite possible that the rate of GP and rate of NP will come down. A perusal of the results shown by the assessee for ITA No.2109/Del/2015 the impugned assessment year as well as the immediately preceding assessment years shows that the net profit in the impugned assessment year has been shown at 1.79% whereas it was 2.67% during 2009-10 and 1.17% during assessment year 2008-09. Since the net profit ratio is fluctuating which was shown at 1.17% at 2008-09, 2.67% for assessment year 2009-10 and 1.79% for assessment year 2010- 11, therefore, the profit declared at 1.79% during the impugned assessment year cannot be accepted. Considering the totality of the facts of the case and considering the fact that the books of account of the assessee are audited and the auditors have not pointed out any defects and the turnover of the assessee has gone up substantially during the year as against the immediately preceding assessment years, therefore, we deem it proper to adopt the net profit ratio of 1.88% which is the average of the current year as well as the two immediately preceding assessment years. The Assessing Officer is directed to recompute the addition to be made on the basis of the net profit ratio as against the GP ratio adopted by him and upheld by the CIT(A). Since we are going for net profit addition, the various other additions made by the Assessing Officer and sustained by the CIT(A), in our opinion, do not require any separate addition and the same are liable to be deleted. The grounds raised by the assessee are accordingly partly allowed.*

6. In view of the above, we do not find any reason to agree with the opinion of the learned PCIT whereby he had directed that the assessee was duty bound to deduct the amount as per section 40(a)(ia) of the I.T. Act.

7. An analysis of the various judicial precedents cited before us by the Id.AR, the principle which emerges is that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

8. In view of the above, we do not find the order of the learned PCIT is in accordance with the law as the Revenue failed to prove that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 29<sup>th</sup> November, 2022.

<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
--	--

Hyderabad, dated 29<sup>th</sup> November, 2022.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Venkata Rami Reddy Constructions, C/o Katrapati & Associates, 1-1-298/2B/3, 1 <sup>st</sup> Floor, Ashok Nagar, Hyderabad
2	ACIT, Circle 1 No.2-430-8 Nagarajupet, Kadapa
3	Pr. CIT (A)-Tirupati
4	Jt. CIT-, Kurnool Range, Kurnool
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*