

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No: 404/Rjt/2017
Assessment Year: 2013-14**

The D.C.I.T. Circle-1(1), Rajkot (Appellant)	Vs	M/s. Backbone Projects A-9, Kumud Apartment, Off C.G. Road, Stadium Road, Navrangpura, Ahmedabad PAN: AABCB1582E (Respondent)
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**Assessee Represented: Shri D.M. Rindani, A.R.
Revenue Represented : Shri Shramdeep Sinha, Sr.D.R.**

Date of hearing : 17-11-2022
Date of pronouncement : 06-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the Appellate order dated 14.08.2017 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the Assessment order passed under section 143(3) r.w.s. 144 of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is a Company engaged in the business of Civil Contractor and carried out various infrastructure projects. For the Assessment Year 2013-14, the assessee filed its Return of Income declaring total income of Rs.1,29,95,389/-. The case was selected for scrutiny assessment as the assessee claimed High ratio of refund to TDS, Large expenses in the claim of Profit and Loss account and Low income shown being a large contractor. A show cause notice was issued to explain the above reasons and why the income should not be estimated at 8% on the total turnover of the assessee.

2.1. The assessee vide reply letter dated 09.11.2015 submitted that the reason for high ratio to TDS is that the assessee had given back to back contracts worth Rs. 97.89 crores and the income from own contract was only Rs. 72.00 crores, which was from contracts awarded in 2010 which were quoted below the tender estimated cost and also due to increase in material cost, this had serious effect on profitability. The work executed during the year was 15-18% lower than the estimated Tender cost. Further, there was delay in timely execution of work due to extreme liquidity problems. Thus the low profit due to fixed costs like interest and depreciation. Though the show cause notice fixing the case for hearing on 16.11.2015, the assessee submitted its reply on 09.11.2015 itself before Diwali vacation. The assessee undertook to file all relevant

records before the Assessing Officer. However the Assessing Officer without taking note of this above reply passed a best judgment assessment order rejecting the books of accounts and estimating the turnover at 8% which was done in assessee's own case for the earlier assessment year which is confirmed by Hon'ble ITAT Rajkot Bench, Rajkot (Guj.)

3. Aggrieved against the exparte assessment order, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad. The Ld. CIT(A) after calling for a Remand Report from the Assessing Officer, deleted the estimation of income @ 8% made by the Assessing Officer as follows:

".... 8. Facts of the case, findings of the AO and submissions of the appellant have been gone through. It was observed from the assessment order that the AO issued show cause notice on 02.11.2015 calling for certain details, which were originally called for from the assessee in the notice u/s 142(1) dated 31.7.2015, but the assessee failed to submit the same. The details were related to the method of working of WIP and closing stock, construction activities and other expenses. He also called for details of default in depositing PF to the accounts of the employees, proof of new additions made to the fixed assets, copy of bank statements, cost of material expenses etc. with supporting evidence. Explanation was also called for about receipt of interest from J&K Bank Ltd, high ratio of refund from TDS, large other expenses and low income inspite of having huge contract receipts. The assessee was asked to furnish these details on 16.11.2015 and in case of non-compliance by the assessee The AO proposed to reject books of accounts and estimate profits @ 8%.

8.1. As discussed above, the appellant furnished copy of the details, which he claimed to have submitted to the AO during the assessment proceedings in compliance to the show cause notice dated 2.11.2015. In view of such facts and circumstances of the case, a remand report was called for from the AO. He was also requested to allow an opportunity to the appellant if required. The AO categorically mentioned in para 4.3 to 4.6 in the remand report that the assessee produced all the books of accounts with vouchers and bank statements. Written submissions, in response to the details called for, were also furnished. The books of account were produced in soft copy also which was placed on record. Similarly, the AO also gathered information u/s 133(6) from the sundry creditors and found

them in order. Random verification was carried out of the bills of purchase, contracts, payments of job work charges and expenses etc. and he found these documents in order. ”

8.2 Thus, it was revealed that the assessee produced books of accounts, supporting bills and vouchers, bank statements, agreements with sub contractors (for back to back contracts assigned to them by the assessee) etc. before the AO during the remand proceedings. The AO did not give any adverse findings from the details called for, cross verifications conducted and the books of accounts. Therefore, after taking into account all the facts and circumstances of the case, in my considered opinion, the AO ignored the details furnished by the assessee with his letters dated 4.11.2015 and 6.11.2015 in the assessment proceedings, rejected books of accounts without any basis and estimated income @ 8% merely on the basis of conjectures and surmises. These details were available on the record. In the light of the above, therefore, the grounds of appeal are allowed.

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT(A) has erred in law and on facts in deleting the addition N.P. estimated @ 8% of Rs. 1,70,57,84,798/- i.e. Rs.13,64,62,783/-.

2. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.

5. Ld. CIT-DR Shri Shramdeep Sinha appearing for the Revenue submitted that the Ld. CIT(A) grossly erred in deleting the estimation made by the Assessing Officer @ 8% in the absence of necessary evidences and records are not produced by the assessee before the Assessing Officer. The Ld. CIT(A) further erred in not following the Co-ordinate Bench decision in assessee's own case in ITA Nos. 707 to 710/Rjt/2014 dated 29.05.2015 which upheld the estimation of profit @ 8%. Thus the Ld. CIT(A) has not justified in giving the relief to the assessee, the same is liable to be set aside and that of the Assessing Officer is to be restored and allow the Revenue's appeal.

6. Per contra Ld. A.R. Shri D.M. Rindani appearing for the Assessee submitted before us a Paper Book carrying various details filed by the assessee in response to the 142(1) notice and the record submitted during Remand Report proceedings and the Ld. A.O.'s Remand Report findings as follows:

4.2 On being remand proceedings, the assessee has been given ample opportunity of being heard vide this office letter did. 21.11.2016 & 05.01.2017 and has been asked to furnish the details called for alongwith all its books of accounts.

4.3 In response the assessee has produced all its books of accounts, bills, vouchers, banks accounts on 19.01.2017. The assessee also filed a written submission in response to details called for. The Assessee produced all the books of accounts in softcopy also which is also kept on record.

4.4 During the course of remand proceedings and on the basis of details of sundry creditors information u/s 133(6) to various trade creditors were called for and the same, has been received and found to be in order.

4.5 In respect of an additional evidences and details of the contract receipts., as per the directions of the Ld. CIT(A) u/s 250(4) of the Income Tax Act, on being enquired to the Assessee, the assessee, during the course of remand proceedings, has produced the computerized print outs of the books of accounts consisting of registers including contract receipt ledger, ledger of back to back contract payment to sub-contractors, Job work Register, Purchase Register, and the bills of purchase, sale, copy of bank book etc.

4.6 On random verification of the bills including purchase bills, contract bills and payment of job work charges, payment of expenses etc. were verified and found in order.

6.1. Thus the Ld. A.R. claimed that the Ld. CIT(A) was correct in deleting the addition made by the Assessing Officer after due verification of records, books and trade creditors by summoning u/s. 133(6) of the Act by the Assessing Officer and found no adverse findings in the assessee's books, records and submissions. Therefore pleaded to dismiss the Revenue appeal.

7. We have given our thoughtful consideration and perused the materials available on record. From going through the Ld. CIT(A)'s

order and Remand Report submitted by the Assessing Officer dated 13.6.2017, the operating portion extracted hereinabove. We find that the Assessing Officer has verified the records produced including books of account, bills, vouchers, bank accounts and also summoned various trade creditors and found the same to be in order. The Assessing Officer also verified the job work charges, payment of expenses etc. and found to be in order. Based on the above Remand Report, the Ld. CIT(A) has deleted the addition made by the Assessing Officer. Thus the appeal filed by the Revenue is an unnecessary exercise and frivolous appeal. We do not find any merits in the ground raised by the Revenue, so the same is hereby rejected.

8. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 06-01-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 06/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

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

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट