



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.439/CTK/2017
Assessment Year :2010-2011**

DCIT, Circle-2(1), Bhubaneswar.	Vs.	B.C.Bhuyan Construction Pvt Ltd., Plot No.890, Palasuni, Rasulgarh, Bhubaneswar
PAN/GIR No.AADCB 3304 N		
(Appellant)	..	(Respondent)

**ITA No.446/CTK/2017: Asst. Year :2010-2011
ITA No.442/CTK/2016 : Asst.year: 2012-2013
ITA No.443/CTK/2016 : Asst.year: 2013-2014**

B.C.Bhuyan Construction Pvt Ltd., Plot No.890, Palasuni, Rasulgarh, Bhubaneswar.	Vs.	DCIT, Circle-2(1), Bhubaneswar
PAN/GIR No.AADCB 3304 N		
(Appellant)	..	(Respondent)

Assessee by : S/Shri P.C.Sethi/Ashok Kumar Moharana, ARs
Revenue by : Shri M.K.Gautam, CIT DR/Shri S.C.Mohanty, Sr DR

**Date of Hearing : 19/01/2023
Date of Pronouncement : 19/01/2023**

ORDER

Per Bench

ITA No.439/CTK/2017 and ITA No.446/CTK/2017 are cross appeals filed by the revenue and assessee against the order of the Id CIT(A)-2, Bhubaneswar dated 31.7.2017 in Appeal No. 0272/2015-16 for the assessment year 2010-2011.

2. S/Shri P.C.Sethi/Ashok Kumar Moharana, Id ARs appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that in assessee's appeal, the assessee has challenged the action of the Id CIT(A) in upholding the action of the Assessing Officer in estimating the net profit of the assessee at 11%. It was the submission that in revenue's appeal, the revenue has challenged the action of the Id CIT(A) in deleting the addition made by the AO in respect of sundry creditors. It was the submission that the assessee had filed its return of income, however, the assessee was unable to produce the books of account at the relevant point of time and consequently, the Assessing Officer had rejected the assessee's books of account and had estimated the net profit of the assessee at 11% as against 2.95% disclosed by the assessee. It was the submission that the Assessing Officer had estimated the net profit of the assessee by relying upon the decision of the Co-ordinate Bench of this Tribunal in the case of D.D.Pati & Ors in ITA

No.678/CTK/2004 for the assessment year 2001-02 order dated 24.11.2005 as also in the case of ARSS Infrastructure Project Ltd, the citation has not been provided by the AO. It was the submission that the case of D.D.Pati & Ors (supra) would not apply insofar as the turnover in that case was about Rs.4,26,00,000/- as against Rs.10,12,00,000/- in respect of the assessee. It was also the submission that the facts of ARSS Infrastructure Project Ltd (supra) would not apply insofar as the turnover received from the contract work of that company was Rs.624 crores. It was the submission that the assessee has been disclosing the net profit of 5.4% for the assessment year 2012-13 and 4.8% for the assessment year 2013-14 . It was the submission that the assessee's book results were more appropriate. It was the prayer that the net profit as estimated in the case of the assessee may be reduced to 5%.

4. In reply, Id CIT DR submitted that the assessee has not produced its books of account and consequently, the estimation as done by the Assessing Officer and upheld by the Id CIT(A) is correct. It was the submission that the Co-ordinate Bench of this Tribunal has accepted the net profit rate of 11% in one of the case. It was the further submission that ARSS Infrastructure Project Ltd (supra) is not the decision of the Tribunal but it was the facts as disclosed by that company during the relevant assessment year. It was the submission that on a total turnover of Rs.624

crores, when the assessee could disclose a net profit rate of 11%, such percentage should validly be applicable to assessee's case also.

5. We have considered the rival submissions. The best comparison for determining the net profit is primarily assessee's own case for earlier or subsequent years. In the absence of such information, the next best comparison is of similar companies with similar types of business and turnover. In the present case, the comparison as brought out by the Assessing Officer is one of a company which is having far less turnover and in another one having a substantially higher turnover. These are not comparative cases. However, in the case of the assessee itself the net profit percentage for the subsequent years i.e. 2012-13 and 2013-14 is in the range of 4.8% to 5.4%. This being so, we are of the view that the interest of justice would be fully served if the net profit rate is fixed at 6% in the case of the assessee. Consequently, the appeal of the assessee is partly allowed.

6. Coming to the revenue's appeal, it was submitted by Id CIT DR that the assessee had been unable to produce the books of account before the Assessing Officer. The Assessing Officer had called for information u/s.133(6) of the Act from the sundry creditors, who had not responded. It was the submission that consequently, the Assessing Officer made the disallowance of entire sundry creditors. It was the submission that the Id CIT(A) took the view that as the books of account of the assessee has been

rejected, the disallowance of the sundry creditors is not permissible insofar as out of the total disallowance of Rs.3.11 crores, Rs.2.42 crores related to the trade creditors and the balance was in respect of the statutory dues, which have been paid before the due date of filing of the return. It was the submission that the Id CIT(A) failed to consider that the sundry credits is a figure appearing in the balance sheet and the assessee had not been able to show that said sundry creditors were actually trade creditors.

7. In reply, Id AR drew our attention to pages 166 to 167 of PB, which were the details of the sundry creditors representing the trade creditors. The total purchase as shown in the said list is of Rs.3.54 crores and the sundry creditors were shown at Rs.2.42 crores. It was the submission that the said sundry creditors were actually trade creditors and the Id CIT(A) was right in deleting the addition.

8. We have considered the rival submissions. A perusal of pages 164 to 167 clearly shows that the sundry creditors of Rs.2.42 crores is in fact trade creditors. Further, the balance of sundry creditors as shown in the balance sheet are only statutory dues, which have also been paid before the due date of filing of the return. This being so, as the books of account have already been rejected and such rejection has not been challenged, we are of the view that the findings of the Id CIT(A) in deleting the addition as made by the AO is on right footing and does not call for any interference. Consequently, the ground taken by the revenue stands dismissed.

9. In the result, appeal of the assessee is partly allowed and the appeal of the revenue stands dismissed.

ITA Nos.442 & 443/CTK/2016- Asst.Years; 2012-13 & 2013-14

10. Both the appeals are filed by the assessee against the orders dated 2.9.2016 and 14.10.2016 of the Id CIT(A)-1, Bhubaneswar in Appeal No.0099/15-16 and No.0513/15-16 for the assessment years 2012-13 & 2013-14, respectively.

11. S/Shri P.C.Sethi/Ashok Kumar Moharana, Id ARs for the assessee and Shri M.K.Gautam, Id CIT DR and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

12. It was submitted by Id AR that in the course of assessment proceedings, the Assessing Officer had disallowed the labour charges to an extent of 10% for the assessment year 2012-13 and 5% for the assessment year 2013-14. It was the submission that the Assessing Officer had disallowed said labour charges on the ground that complete bills and vouchers and other documentary evidences in support of the labour charges could not be verified fully. It was the submission that the assessee is a civil contractor. The civil contracts are labour intensive. The Assessing Officer held that the assessee has not done the work through labour contractor and has paid the wages to the labourers directly. It was the submission that if a labour contractor is brought into this contract, the profit of the assessee

would further go down because the labour contractor would also be charging his profit margin. It was the submission that the assessee to maximize its profit has done the contract on his own by employing the labourers directly. It was the submission that it cannot be treated as fault on the part of the assessee for making the disallowance. It was the further submission that just because the Assessing Officer was unable to verify all the bills and vouchers, no disallowance should have been made.

13. In reply, Id CIT DR and Id SR DR submitted that the assessee has not produced all the bills and vouchers and that is why the Assessing Officer has mentioned that the bills and vouchers were not fully verifiable. It was the submission that it cannot be ruled out that there is no inflation in the labour payments. Consequently, the disallowance as made by the AO and confirmed by the Id CIT(A) is liable to be upheld. It was the further submission that all the payments have been made in cash and the vouchers are self made vouchers and, therefore, unverifiable.

14. We have considered the rival submissions. As perusal of the assessment order for the assessment year 2012-13 shows that the Assessing Officer has made the disallowance at 10% out of the labour payments. The disallowance of 10% has been reduced by the Id CIT(A) to 7%. The revenue is not in appeal against the reduction. A perusal of the assessment order for the assessment year 2013-14 shows that the Assessing Officer has estimated the disallowance to 5% out of labour

payments. Ld CIT(A) has confirmed the disallowance of 5%. It is an admitted fact that the labour payments had been made in cash and consequently, it would not be possible for the verification of the labour payments. This being so, the action of the AO in making estimated disallowance is liable to be upheld. The facts of the present case clearly show that the net profit as disclosed by the assessee for the assessment year 2012-13 is 4.8% and for the assessment year 2013-14 is 5.4%. Considering these facts and also considering the fact that the net profit of the assessee for the assessment year 2010-2011 has been estimated by this Tribunal in assessee's own case at 6%, we are of the view that the disallowance of labour charges is liable to be restricted to 4%. The Assessing Officer is directed to restrict the disallowance of labour charges as made by him at 4% for the assessment years 2012-13 and 2013-14.

15. In the result, both the appeals of the assessee stand partly allowed.

Order dictated and pronounced in the open court on 19/01/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 19/01/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The assessee: B.C.Bhuyan Construction Pvt Ltd., Plot No.890, Palasuni, Rasulgarh, Bhubaneswar.
2. The Revenue: DCIT, Circle-2(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar/CIT(A)-2, Bhubaneswar
4. Pr.CIT- concerned.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack