

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
ANDSH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A.No. 382/Asr/2010
Assessment Year: 2007-08**

M/s Construction Engineers, 54, Industrial Estate, Barzulla Srinagar. [PAN: AABFC7715P] (Appellant)	Vs.	DCIT-Central Circle, Jammu. (Respondent)
--	------------	---

**I.T.A.No. 495/Asr/2010
Assessment Year: 2007-08**

DCIT-Central Circle, Jammu. (Appellant)	Vs.	M/s Construction Engineers, 54, Industrial Estate, Barzulla Srinagar. [PAN: AABFC7715P] (Respondent)
--	------------	---

Appellant by	Sh. M.A. Mir, AR
Respondent by	Ms. Priyanka Singla, Sr. DR.

Date of Hearing	26.12.2022
Date of Pronouncement	31.01.2023

ORDER

Per Anikesh Banerjee, JM:

The cross appeal of the assessee and revenue are challenged against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda, [in brevity the

CIT(A)], bearing Appeal No. 163/09-10 date of order 28.06.2010 order passed u/s 250(6) of the Income Tax Act 1961, (in brevity the Act) for A.Y. 2007-08. The impugned order was originated from the order of the Id. Addl. Commissioner of Income Tax, Range-3, Sringar, Jammu.

2. Brief fact of the case is that both the cases are recalled from the order of **Miscellaneous Application No.12/Asr/2020**, date of order 20.12.2022, authored by the ITAT, Amritsar Bench. In the factual matrix of the cases is that the assessee & revenue for A.Y. 2007-08 had challenged the order of the Id. CIT(A) before the ITAT, Amritsar Bench. The relevant paragraph of the order of the Bench dated 30/12/2019 is extracted as follows:-

“2. The factual matrix of the case in hand is that the assessee for Asst. Year:2007-08 had declared an income of Rs.2,30,64,265/- by filing the return of income on dated 29/03/2008. Thereafter, the return was revised on dated 31/03/2008 by declaring the income of Rs.2,52,17,900/-. During the year under consideration, the assessee had shown gross contract receipts of Rs.45,32,03,843/- in the original return and Rs.46,23,06,595/- in the revised return of income and total net profit of Rs.2,52,17,900/- on the basis of net profit rate @ 5.08%

as declared by the assessee. The Assessing Officer did not agree with the net profit rate applied by the assessee and ultimately estimated the net profit rate @ 10.5% which was challenged before the Ld. CIT(A) by the assessee. The Assessing Officer reduced the net profit rate from 10.5% to 10%, against which, the Assessee as well as the Revenue Department preferred separate appeals under consideration. The Co-ordinate Bench vide its order dated 11.05.2012 decided both the appeals and applied net profit rate @ 7% on the gross contract receipts declared by the assessee minus interest on fixed deposits and other receipts. The Hon'ble Co-ordinate Bench also affirmed the view of the Ld. CIT(A) to the effect that the Ld. CIT(A) has rightly treated the firm as a AOP and has disallowed the interest and salary to partners and the interest income has rightly been treated as income from other sources. The Hon'ble Co-ordinate Bench also held that amount of Rs.6,69,340/- has been duly reflected in the books of account. Once having applied the net profit rate, no addition can be made on account of creditors declared by the assessee. Consequently, the Hon'ble Co-ordinate Bench deleted the addition of Rs.6,69,340/-."

The grievance of the revenue is that the said order dated 30/12/2019 of ITAT was not considered the direction of the Hon'able Jurisdictional High Court and the revenue had filed miscellaneous application before the bench against the said order

of ITAT. The Bench has passed a speaking order in relation to dispose of the application of revenue. The relevant paragraphs of the order of bench dated 20/12/2022 is extracted as below:-

“2. *Tersely, we advert the fact of the case is that the ITAT, Amritsar Bench has passed the order on 30/12/2019 by adjudicating the net profit @ 7% on gross contract receipts declared by the assessee. The revenue had filed an appeal before the Hon’ble **Jammu & Kashmir High Court at Srinagar** bearing ITA No. 04/2012 date of order 05.06.2017. The Hon’ble High Court had passed the order with direction to remand back the orders of ITAT, Amritsar Bench bearing ITA No. 495/Asr/2010 & 382/Asr/2010, both for A.Y. 2007-08 and date of order 02.07.2013. The revenue has agitated the issue before the ITAT, Amritsar Bench through miscellaneous application that the bench had passed the order without considering the net profit rate not less than 9% as directed by the Hon’ble Jurisdictional High Court. The application is filed before the Bench for further adjudication.*

The assessee was called for hearing, but none was present on behalf of the assessee. An adjournment application was filed by the counsel of the assessee. Considering the nature of dispute and the fact of the case, we proceed to dispose the application of the revenue after hearing the learned Sr. DR on the basis of material available on the record. The adjournment application is rejected & the matter is taken for hearing.

3. *The ld. Sr. DR first took our attention in the last para of the application.*

“However, decision of the Hon'ble ITAT in dismissing the appeal of the Revenue is not justified as the appeal has been decided by the Hon'ble High Court in favour of the assessee as discussed supra and the case was remitted back to the Tribunal to ascertain the appropriate net profit rate which must not be less than 9% which was admitted by the assessee itself during High Court proceedings. However, from the perusal of the order passed by the Tribunal vide its order dated: 495/asr/2010 and 382/Asr/2010 dt. 320.12./2019, it seems that the Hon'ble ITAT, Amritsar has directed the A.O. to apply net profit rate of 7% on the gross contract receipts declared by the assessee which is less than the net profit rate of 9% directed by the Hon'ble High Court and needs to be rectified under section 245(2) of the Act, in this case being mistake apparent from records. It is therefore requested that the Hon'ble ITAT may be pleased to entertain this application for review of the order passed on 30.12.2019 and be re-adjudicated.”

3.1 *The ld. Sr. DR further argued and pointed out the para no. 8 of order of Hon'ble Apex Court which is extracted as below:*

“8. Consequently, we set-aside the finding of the Tribunal to the effect that the net profit rate should be 7%. The matter is remitted to the Tribunal to ascertain the appropriate net profit rate which must not be less than 9% which was admitted by the assessee itself.”

4. We thoughtfully considered the submission of the revenue, considered the documents available in the record and respectfully observed the order of the Hon'ble Jammu & Kashmir, High Court. The Hon'ble High Court directed the ITAT, to ascertain the net profit rate should not be less than 9% and remanded back both the orders for further adjudication. The order passed by the Hon'ble Bench on dated 30.12.2019, mistakenly had not considered the order of Hon'ble Jurisdictional High Court and had restricted the net profit @ 7 % on gross contract receipts declared by the assessee. Order of the jurisdictional High Court is binding on us. The orders passed by the Bench is in mistake apparent from the record. Respectfully considering the observation of the order of Hon'ble Jurisdictional High Court, both the orders of ITAT, Amritsar Bench bearing ITA Nos. 495/Asr/2010 & 382/Asr/2010 pronounced on 30.12.2019 are recalled for further hearing. The matter is fixed for hearing on 26.12.2022 before the Bench.

5. In the result, the Miscellaneous Application of the revenue bearing **M.A. No. 12/Asr/2020** is allowed.”

3. We heard the rival submission and perused the documents available in the record. The bench is only adjudicating the specific point related ratio of net profit. The ld. counsel for the assessee has vehemently argued and tried to place that the AO had taken a different view with ld. CIT(A) after considering the order of the ITAT. The ITAT has passed the reasonable order to maintain the net profit ratio @

7%. The Id. Sr. DR had only relied on the order of the Hon'able Jurisdictional High Court & argued that the Hon'able Jurisdictional High Court is binding on the ITAT.

We respectfully consider the order of the Hon'able Jurisdictional High Court.

The relevant paragraph of the order of Hon'able **Jammu & Kashmir High Court at Srinagar**, bearing ITA No. **04/2012** date of order **05.06.2017** is extracted as follows: -

“8. Consequently, we set-aside the finding of the Tribunal to the effect that the net profit rate should be 7%. The matter is remitted to the Tribunal to ascertain the appropriate net profit rate which must not be less than 9% which was admitted by the assessee itself.”

The assessee is eligible for net profit @ 9% with interest and salary to partners and depreciation to be allowed be considered. Here, we are not taking any other views but only to respectfully follow the order of the Jurisdictional High Court which is binding on us. The matter is set aside to the Id. CIT(A) for re-compute the income of the assessee as per direction of the ITAT. Needless to say, the assessee should

get reasonable opportunity of hearing for substantiate its claim. We order accordingly.

4. In the result, the appeals of both the parties bearing **ITA Nos.382 & 495/Asr/2010** are allowed for statistical purposes.

Order pronounced in the open court on 31.01.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order