

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.370/NAG/2016  
निर्धारण वर्ष / Assessment Year : 2010-11

Atasha Ashirwad Builders, 144, Ambazari Hill top, Nagpur- 440010. PAN : AAFCA4207H	Vs.	ACIT, Circle-8, Nagpur.
Appellant		Respondent

Assessee by : Shri Kapil Hirani  
Revenue by : Shri Amol Khairnar

Date of hearing : 19.07.2023  
Date of pronouncement : 31.07.2023

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Nagpur [‘the CIT(A)’] dated 18.03.2016 for the assessment year 2010-11.

2. Briefly, the facts of the case are that the appellant is Contractor engaged in the business of execution of Government Contract. The Return of Income for the assessment year 2010-11 was filed on 05.02.2011 declaring total income of Rs.49,74,990/-.

Against the said return of income, the assessment was completed by the Asstt. Commissioner of Income Tax, Circle-8, Nagpur ('the Assessing Officer') vide order dated 27.02.2013 passed u/s 144 of the Income Tax Act, 1961 ('the Act') at a total income of Rs.1,17,50,597/-. While doing so, the Assessing Officer estimated the profits from the business of execution of contract at the rate of 6% on the ground that the appellant could not discharge the onus of proving the genuineness of payment made to the sub-contractors.

3. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the Id. CIT(A) challenging the rejection of books of accounts and application of GP rate at 6% is excessive and ordinary. The Id. CIT(A) confirmed the finding of the Assessing Officer by rejecting the contention of the appellant that the Assessing Officer had not given reasonable adequate opportunity of proving the genuineness of the sub-contractors payments and, accordingly, upheld the action of the Assessing Officer estimating the income of the assessee at the rate of 6%.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. Before us, it is contested that the Assessing Officer ought not to have rejected the books of accounts, which are duly audited and accepted by the Department in the earlier years. It is further submitted that the sub-contractors to whom the payments were made by the appellant had filed their return of income duly reflecting the receipts of the appellant company and all the payments were made by the account payee cheques after deducting tax at source at the applicable rate. Without prejudice to the above, it is contested that the estimating of the net profit at rate of 6% of gross receipts is arbitrary and not based on any comparable instances. It is further contended that having estimated the income it is not open to the Assessing Officer to make separate addition in respect of bank interest etc which formed part of the trading gross receipts of business.

6. On the other hand, ld. Sr. DR submits that since the assessee had failed to prove the genuineness of the sub-contractors payment by producing the sub-contractors for confirmations, the Assessing Officer was justified in rejecting the books of accounts estimating the profit at the rate of 6% and, therefore, no interference is called for.

7. We heard the rival submissions and perused the material on record. We had carefully gone through the orders of the lower authorities. From perusal of the assessment order, it would reveal that the appellant had failed to discharge the burden of proving the genuineness of the expenditure incurred on sub-contractors payments. Mere deduction of tax at source on the payments made to the sub-contractors does not establish the genuineness of expenditure. Therefore, we uphold the action of the Assessing Officer as confirmed by the Id. CIT(A) in rejecting the books of accounts. However, it is settled position of law that even in the case of best judgement assessment, estimation of profit cannot be made on the basis of a pure guess work and conjectures. The estimation should be based on comparables and material. Before us, the Id. AR had filed a chart showing the gross net profit earned by the assessee in preceding three years ranges from 2.1% for the assessment year 2008-09 and 2.7% for the assessment year 2009-10. Therefore, in our considered opinion, the interests of justice would be met, if we direct the Assessing Officer to estimate the net profit at the rate of 3% of the gross receipts and we order accordingly. We make it clear that once the taxable income is estimated rejecting the books

of accounts, no separate addition of any other items is required to be made. Thus, the grounds of appeal filed by the assessee stands partly allowed.

8. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 31<sup>st</sup> day of July, 2023.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> July, 2023.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur.
4. The CIT-II, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /  
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.