

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 147/PAT/2014
Assessment Year: 2010-2011**

***M/s. C.K. Construction & Co.,.....Appellant
P.O. Bhadaiya,
Mohiuddinagar, Dist. Samastipur-848502, Bihar
[PAN:AAABC0217D]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-3, Darbhanga***

Appearances by:

*Shri K.K. Choudhry, C.A., appeared on behalf of the
assessee*

*Shri Rupesh Agrawal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : August 22, 2023

Date of pronouncing the order : October 09, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals)-1, Patna dated 25.05.2014 passed for Assessment Year 2010-11.

2. This appeal was earlier listed before the Tribunal and it was dismissed for want of prosecution vide order dated 12.10.2017. Thereafter the assessee has filed a Miscellaneous Application bearing M.A. No. 6/PAT/2018 and pointed out the reasons for its absence on the date of hearing of the appeal. The Tribunal was satisfied that the assessee was prohibited with reasonable cause for not appearing before the Tribunal and accordingly recalled the *ex-parte* order vide which appeal of the assessee was dismissed *in limine*. The Tribunal has restored the appeal to its original number for adjudication on merit.

3. A perusal of the record would indicate that the assessee has raised three fold of grievances. However, under each fold, it has taken various sub-grounds. In total, the sub-grounds taken by the assessee are eight in number under three heads of grievances.

4. With the assistance of Id. Representatives, we have gone through the record carefully. It emerges out from the record that the assessee at the relevant time was engaged in Civil Construction. It has filed its return of income on 12.04.2011 showing an income of Rs.13,15,430/-. The assessment order was passed on 26.03.2013 whereby taxable income of the assessee was

determined at Rs.63,29,013/- as against the returned income.

5. Dissatisfied with the additions, the assessee carried the matter in appeal. The ld. CIT(Appeals) has partly allowed the appeal. It has only relegated one of the issues for verification to the ld. Assessing Officer, otherwise in principle concurred with the ld. Assessing Officer.

6. In the first fold of grievance, the assessee has contended that the ld. CIT(Appeals) has erred in confirming the disallowance made by the ld. Assessing Officer by disallowing 4.98% of the labour expenditure. Brief facts are that the assessee has debited expenditure of Rs.1,96,25,619/-. The ld. Assessing Officer has observed that gross contract receipts shown by the assessee are of Rs.6,54,51,133/- and the labour expenditure is roughly 29.98%. The ld. Assessing Officer has observed that as per the industrial norms in the case of civil construction, the expenditure should not exceed 25%. Accordingly he disallowed 4.98% of the expenditure claimed by the assessee which give rise to an addition of Rs.32,59,466/-.

7. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee on this issue.

8. On due consideration of the facts and circumstances, we are of the view that the Id. Assessing Officer has erred in making the disallowance. The simple reason is that he has not assigned any reason except observing that as per the industrial norms in the civil construction, expenditure should be around 25%. For this norm, only an estimated figure was made by some expert body who has opined about the rough figure. It cannot be a straightway formula for disallowing the claim of any individual assessee. The Id. Assessing Officer has not pointed out a single defect in the details maintained by the assessee. He has not rejected the book result. He has not appreciated the condition under which the assessee has constructed the road. It might be a rural area far away from the standard city system. Thus to our mind, this type of disallowance is arbitrary at the end of the Revenue. We allow this ground of appeal and delete the addition.

9. The next fold of grievance is the addition of Rs.1,55,000/-. The Id. Assessing Officer has observed that fresh capital of Rs.10,50,000/- has been shown in the name of Sri Chandrakant Choudhary, one of the partner of the firm. He disbelieved the claim to the extent of Rs.1,55,000/- and made the addition.

10. We have perused the finding recorded by the ld. Assessing Officer and we are of the view that these are non-speaking. The stand of the assessee was that the partner was having 30 acres of agricultural land and other source of income. He is one of the partners in the firm himself. There cannot be any unexplained contribution from a partner who is having agricultural income. There is no justification at the end of the ld. Assessing Officer to make an addition of Rs.1,55,000/- because out of the total contribution of Rs.10,50,000/-, he demonstrated that Rs.8,95,000/- was withdrawn from the Bank account and rest was contributed to the firm. To our mind, the explanation given by the assessee was justifiable explanation and the ld. Assessing Officer could not disbelieve it in the absence of contrary information possessed by him, therefore, we allow this ground of appeal and delete the addition.

11. The next fold of grievance is that the ld. Assessing Officer has erred in making an addition of Rs.13,77,684/-. Brief facts of the case are that during the course of assessment proceedings, the ld. Assessing Officer has observed that the assessee has advanced Rs.87,47,200/- to various persons. He also observed that out of the total advance, a sum of Rs.6,00,000/- was advanced to one of the partners of the firm. In the opinion of ld. Assessing Officer, the assessee should have

charged interest on these advances. He calculated a notional interest @ 15.75% and worked out the alleged notional interest income at Rs.13,77,684/-. He made an addition of this amount.

12. On appeal, the ld. 1st Appellate Authority has observed that the assessee has claimed that these advances were given to certain individual for supply of material. Therefore, the ld. CIT(Appeals) has relegated the issue to the file of ld. Assessing Officer to verify whether any supply of material was made by these parties in the next financial year. In case, supply of material has been done and accounts are squared off, then, no interest income ought to be assumed.

13. The ld. Counsel for the assessee contended that these are the old advances, which have been carried forward from the past. The assessee has been making advances for supply of material. Sometimes the material did not reach to the assessee equivalent to the amount of advances and, therefore, outstanding accumulated, but no notional interest could be assumed by the ld. Assessing Officer on these advances.

14. On the other hand, ld. Sr. D.R. drew our attention towards page no. 3 of ld. CIT(Appeals)'s order, where this issue has been examined. He submitted that the assessee

itself has conceded to the extent of disallowance of proportionate interest on the loan given to the partner. He submitted that since the assessee did not dispute it before the ld. CIT(Appeals), it cannot be permitted to raise this plea before the Tribunal.

15. We have duly considered the rival contentions and gone through the record carefully. A perusal of the assessment order would show that the ld. Assessing Officer has just made an observation that on the one hand, assessee has taken loan from the Bank and on the other hand, it has been advancing the money to various persons without charging interest. The ld. Assessing Officer has nowhere mentioned how much interest expenditure has been debited in the accounts. He has not made disallowance out of interest expenditure, rather he has made the addition on notional interest, which is not permissible. The Income Tax Department cannot force any business entity to earn interest income. It can at the most disallow interest expenditure proportionately by observing that interest bearing funds have been diverted for non-business users without charging interest, but there is no finding to this effect in the assessment order, therefore, in principle, it is not a sustainable addition. Even if the assessee has conceded before the ld. CIT(Appeals) that does not show that assessee cannot agitate in the further appeal. There can

be some misconception of fact and/or there can be an incorrect observation at the end of Id. CIT(Appeals). The approach of the Id. Assessing Officer is fundamentally erroneous. It cannot make an addition on notional interest income. Accordingly, we allow this ground of appeal also and delete the addition.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 9.10.2023.

Sd/- (Rajesh Kumar) Accountant Member Kolkata, the 9th day of October, 2023	Sd/- (Rajpal Yadav) Vice-President
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*Copies to :(1) M/s. C.K. Construction & Co.,
P.O. Bhadaiya,
Mohiuddinagar, Dist. Samastipur-848502, Bihar
(2) Assistant Commissioner of Income Tax,
Circle-3, Darbhanga
3) Commissioner of Income Tax (Appeals)-1,
Patna,
(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.