

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

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

**I.T.A. No. 151/RAN/2019  
Assessment Year: 2015-2016**

***Deputy Commissioner of Income Tax,..... Appellant  
Circle-1, Ranchi,  
4<sup>th</sup> Floor, C.R. Building (Annexe),  
Main Road, Ranchi***

**-Vs.-**

***M/s. VKS AKS AIPL,.....Respondent  
Khunti Pipratoli,  
Khunti, Jharkhand-835210  
[PAN:AALFV3391A]***

**Appearances by:**

*Shri Rinku Singh, CIT (D.R.), appeared on behalf of the  
Revenue*

*Shri Ajay Kumar Rastogi, Sr. Advocate, appeared on  
behalf of the assessee*

Date of concluding the hearing : October 16, 2023

Date of pronouncing the order : November 08, 2023

**O R D E R**

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

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals),

Ranchi dated 24<sup>th</sup> January, 2019 passed for A.Y. 2015-16.

2. The Revenue has taken five grounds of appeal, but its grievances are that ld. CIT(Appeals) has erred in restricting the computation of net profit at 1% instead of 10% adopted by the ld. Assessing Officer.

3. Brief facts of the case are that the assessee has filed its return of income on 30.10.2015 declaring total income of Rs.13,17,470/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) of the Income Tax Act was issued and served upon the assessee. According to the ld. Assessing Officer, the assessee did not participate in the proceeding hence he commenced *ex-parte* proceeding against the assessee and passed the assessment order *ex-parte* under section 144 of the Income Tax Act. This assessment order is based on the best judgment of the ld. Assessing Officer. The ld. Assessing Officer found that the assessee-firm is a joint venture firm involving three contractors, namely Shri Vijay Kumar Sahu, Shri Arbind Kumar Singh and M/s. Altima Infrastructure (P) Limited. The firm is engaged in the business of Civil Contract.

4. The ld. Assessing Officer did not accept the book result declared by the assessee and estimated the profit

at 10% of the gross receipt, i.e. Rs.36,74,22,775/-. He determined the taxable income accordingly.

5. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld. CIT(Appeals).

6. The ld. 1<sup>st</sup> Appellate Authority has restricted the estimation of profit at 1% as against 10% adopted by the ld. CIT(Appeals). The concluding paragraph of the finding of the ld. CIT(Appeals) reads as under:-

*“As can be seen from the above, the net profit declared by the JV partners are 4.24% and 5.42%. Moreover, the AR has also established with the necessary documentary evidence that the profit percentage even as per the Government of Jharkhand is at a lower percentage. Therefore, it was argued that there is absolutely no justification for estimating the profit at an astronomically higher percentage of 10% especially when the AO in the immediately preceding A.Y. 2014-15 has computed the total income with minor addition which works out to only 0.37% of the net profit. It is the contention of the AR that there is no justification for the AO to estimate the net profit anything higher than 0.37%, which is as per the scrutiny Assessment Order u/s 143(3) for A.Y. 2014-15, I find that lot of force in the argument of the AR, however, it is also noticed that the AO has not examined the written submission filed by the appellant on 26/12/2017 and there was also some delay on the part of the appellant to furnish the written submission before the AO. After taking into account all the facts and circumstances of the case under consideration, I am of the opinion the adoption of 1% of the net profit would meet the ends of justice Therefore, the net profit is estimated at 1%, which is Rs.36,74,227/-. The appellant has shown profit before tax of Rs.11,48,410/-. Thus, the difference amount of Rs.25,25,817/- is sustained and the remaining addition is hereby deleted\* Accordingly, these grounds of appeal are partly allowed”.*

7. With the assistance of ld. Representatives, we have gone through the record carefully. A perusal of the

record would indicate that the joint venture after receipt of the contract would assign the contract to one of the JV partner. In a way, the contract has been executed through the sub-contractor, payment of which constituted more than 99% of the expenditure of the assessee-firm. The assessee has submitted all bills and vouchers. Basically bills are cleared from the Government of Jharkhand because the assessee has been working in construction of roads. The details of payment received by the assessee are reflecting in Form No. 26AS, i.e. all contract receipts were subject to TDS. The ld. 1<sup>st</sup> Appellate Authority has recognized this fact and, therefore, has observed the JV partners, who has executed the work has returned the profit at 4.24% and 5.42%, which were accepted by the Department. It is to be appreciated that on receipt of gross contract, work is being assigned to one of the JV partners, who has carried out the work. The assessee has claimed 99% of the contract receipts as expenditure because the receipts were forwarded /assigned to the partners, who executed the work actually. On appreciating these facts and circumstances, ld. 1<sup>st</sup> Appellate Authority has held that adoption of profit at 1% is an appropriate rate because in the earlier assessment year, scrutiny assessment was done and a profit rate adopted by the ld. Assessing Officer was 0.37%. The ld. Assessing Officer ought to have looked into past history before estimating the profit

at 10%. Therefore, we are of the view that ld. CIT(Appeals) has rightly modified the order of the ld. Assessing Officer and no interference is called for at our end.

**8. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 8.11.2023.

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

**Sd/-**  
**(Rajpal Yadav)**  
**Vice-President**

***Kolkata, the 8<sup>th</sup> day of November, 2023***

*Copies to :(1) Deputy Commissioner of Income Tax,  
Circle-1, Ranchi,  
4<sup>th</sup> Floor, C.R. Building (Annexe),  
Main Road, Ranchi*

*(2) M/s. VKS AKS AIPL,  
Khunti Pipratoli,  
Khunti, Jharkhand-835210*

*(3) Commissioner of Income Tax (Appeals),  
Ranchi, Jharkhand*

*(4) CIT- Ranchi;*

*(5) The Departmental Representative*

*(6) Guard File*

*TRUE COPY*

*By order*

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

***Laha/Sr. P.S.***