

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H': NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No:- 1481/Del/2021
(Assessment Year: 2011-12)**

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| Dy. Commissioner of Income Tax, Central Circle, Ghaziabad. | Vs. | Rishabh Buildcon Pvt. Ltd., D-127, Second Floor, Anand Vihar, Delhi-110092. |
| PAN No: AACCR7502F | | |
| APPELLANT | | RESPONDENT |

Revenue by : Ms. Meenakshi Dohre, Sr. DR
Assessee by : Shri Mohit Gupta, CA &
Shri Neeraj Singh, CA

Date of Hearing : 28.02.2024
Date of Pronouncement : 04.03.2024

ORDER

PER N.K. BILLAIYA, AM

This appeal by the Revenue is preferred against the order of the CIT(A), Kanpur-4, dated 16.08.2021 pertaining to A.Y. 2011-12.

2. The solitary grievance of the Revenue is that the CIT(A) erred in deleting the addition made by the AO to the tune of Rs. 2,37,21,344/-.

3. Representatives of both the sides were heard at length. The case records were carefully perused.
4. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 29.09.2011 declaring total income of Rs. 15,76,550/-. The return was selected for scrutiny assessment and the statutory notices were issued and served upon the assessee.
5. While scrutinizing the return of income, the AO found that the assessee has shown contract receipts of Rs. 2,93,44,779/- and other income of Rs. 23,61,809/-. Information was received from Addl. CIT, Range-2, Hyderabad, who has scrutinized the return of Totem Infrastructure Ltd. The Addl. CIT, Hyderabad, informed as under:

"It may be noted that M/s Totem Infrastructure Ltd(PAN AABCK70200) Indulged in turnover booking transactions of about Rs.580 crores during the A.Y.2011-12 with various entities. As per the evidence available with this office in F.Y.2010-11 as part of the bogus activity, the said company took a contract from M/s VNR Infra and in turn awarded it to M/s Rishabh Buildcon (P) Ltd, Delhi on back to back basis for an amount of Rs.29,65,16,795/-. The assessee despite repeated opportunity could not justify the transactions. It is also noticed that apparently the said concern was paying commission of about 1% to unidentified brokers for arranging such transactions. The entire activity is bogus activity and you may take appropriate decision in the assessment before you."

- 5.1 When this information was confronted to the assessee, it denied the allegation of receiving a contract of Rs. 29,65,16,795/-. The Addl. CIT,

Hyderabad, informed the AO that the MD of Totem Infrastructure Ltd. in his statement has stated that they pay commission ranging from 0.25% to 1%. The AO further received the information that the contract price was Rs. 16,93,71,626/-, but he accepted the contract receipts of Rs. 29,65,16,795/- and estimated profit at 8% and made addition of Rs. 23721344/- .

6. After giving a thoughtful consideration to the finding of the AO, we fail to understand what was the contract receipts was it 29.65 crores or 16.93 crores? Further, when the MD of Totem Infrastructure Ltd. has stated that the commission ranges from 0.25% to 1%, then we fail to understand what is the basis for estimating the profit at 8%. In our considered view, the entire addition has been made on surmise and conjecture without there being any demonstrative evidence; therefore, the findings of the CIT(A) cannot be faulted with.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 04.03.2024

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 04/03/2024.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 28.2.24 |
| Date on which the typed draft is placed before the dictating Member | 29.2.24 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
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| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |