

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", BANGALORE**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.1161/Bang/2023  
Assessment Year: 2007-08**

Late Shri Sheshappa Dasaraddy Raddi by Legal Heir Shri Manjunath Sheshappa Raddi, Shri S.D. Raddi, C/o Ramanna Inamati, Renuka Apartment, Second Cross, Sadhanakeri, Dharwad, Karnataka <b>PAN: AECPR6185B</b>	Vs.	Deputy Commissioner of Income Tax, Circle-2(1), PB Highway, Navanagar, Hubli, Karnataka
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Preethi S Patel, Advocate  
Sri Prasanna N. Urala, Advocate

Revenue by : Sri Subramanian. S, JCIT

Date of Hearing : 16 . 04 . 2024

Date of Pronouncement : 30 . 04 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 30.10.2023 impugned herein passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2007-08.

2. In the instant case, the assessee during the assessment year under consideration was working as civil contractor and by filing its return of income on dated 31.10.2007 had shown a taxable income of Rs.22,09,810/- which was processed under section 143(1) of the Act on 20.12.2007 whereby a refund of Rs.3,46,743/- was granted. Subsequently the case of the assessee was selected for scrutiny as per CBDT guidelines and consequently statutory notices were issued to the assessee. However, the assessee made no compliance and therefore finding no option, the Assessing Officer (AO) passed the order dated 30.11.2009 as ex-parte under section 144 of the Act, by which the AO estimated the net income from contract receipt of Rs.5,10,29,272/- @ 8% rejecting the net profit of Rs.30,69,810/- as shown by the assessee. The AO also made the additions of Rs.8,50,373/- and Rs.55,29,477/- on account of interest income and sales tax refund respectively.

3. The assessee being aggrieved challenged the said additions before the Ld. Commissioner, who sought remand report from the AO. However, in the remand proceedings, the assessee not cooperated and preferred not to file proper details and therefore the AO submitted the remand report adverse to the interest of the assessee before the Ld. Commissioner, who by taking into consideration the said fact and the particular circumstances *“that during the course of appeal proceedings, the assessee has avoided any enquiry or investigation about the correctness of the assessee’s income and since the assessment order was passed under section 144 of the Act and the assessee has not cooperated in enquiry”*, confirmed the gross profit rate @ 8% from contract receipts by rejecting the books of account as made by the AO.

4. Though at the outset the Ld. Counsel of the assessee argued the matter at length and tried to justify its claim and therefore

prayed for deletion of the addition made by the AO and affirmed by the Ld. Commissioner @ 8% of the gross receipts, however, at last submitted that in case the claim of the assessee is not being allowed, then in order to cut short the litigation and for substantial justice, instead of remanding the case, the reasonable estimation of profit can be done by the Hon'ble Bench.

**5.** The Ld. D.R. also honestly submitted that instead of remanding the instant case again and in order to avoid the prolong litigations, he do not have any objection, if reasonable estimation can be made.

**6.** Hence, considering the peculiar facts and circumstances of the case and previous history of the assessee as demonstrated by the assessee, in our considered view, for the just decision of the case and for ends of litigation as submitted by the parties and for substantial justice, estimation of profit @ 5.5.% instead of 8% would suffice the purpose. Hence, the AO is accordingly directed to re-compute the income @ 5.5% of the profit instead of 8%.

Coming to the addition of Rs.8,50,373/- and Rs.55,29,477/- on account of interest income and sales tax refund respectively, we observe that the assessee, as it appears from the assessment order in para 3, had shown the interest income and sales tax refund of the aforesaid amounts in the gross receipts of Rs.5,10,29,272/-, hence there is no justification for making separate additions as made by the AO and affirmed by the Ld. Commissioner. Thus, for the just decision of the case and for the substantial justice, the additions under consideration on account of interest income of Rs.8,50,373/- and sales tax refund of Rs.55,29,477/- are deleted.

**7.** In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open court on 30.04.2024.**

**Sd/-  
(LAXMI PRASAD SAHU)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Bangalore  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Bangalore