

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No. 160/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2012-13)

Maruti Infraventures (India) Private Ltd Secunderabad PAN:AAF6624A	Vs.	Income Tax Officer Ward 16(1) Hyderabad
(Appellant)		(Respondent)
निर्धारित द्वारा / Assessee by: Shri P. Prasad, CA		
राजस्व द्वारा / Revenue by: Shri CH Rajeswara Reddy, DR		
सुनवाई की तारीख / Date of hearing: 01/07/2024		
घोषणा की तारीख / Pronouncement: 03/07/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 09/01/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2012-13.

2. The assessee has raised the following grounds:

- (1) The Learned CIT [A] – National Faceless Appeals Centre [NFAC] has grossly erred both on the facts of the case and the Law involved.
- (2) The CIT[A] is incorrect to uphold the estimation made by the Assessing Officer @ 8% on the sales, when the Appellant as per the Accounting Standards issued by ICAI, has already estimated income on the units sold @ 10% on the cost incurred for each of the year, which method of Accounting has been accepted by the Department on the principles of Consistency, when the construction of them was in progress.
- (3) On the Facts and Circumstances of the case the Learned CIT[A] is incorrect to uphold the view taken by the Assessing Officer in declining to allow the depreciation & interest paid, when the income is estimated, is incorrect in view of the decision pronounced by the Honourable ITAT and AP High Court.
- (4) On the Facts and the circumstances of the case the Learned CIT[A] is incorrect to uphold the addition made by the Assessing Officer for the discounts of Rs. 38,13,275/- pertaining to the previous year's purchases credited during the year, when the income from business itself is estimated, then item wise addition / addition for discounts is not called for and the same be deleted.
- (5) The Appellant craves leave to make amendments, additions or deletions which may be necessary to the grounds filed, with the permission of the Honourable Members of ITAT.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of construction activities filed its return of income for the A.Y 2012-13 on 24.09.2012 admitting total income of Rs.1,23,30,243/- under the normal provisions of the Act and book profit of Rs.1,00,07,885/- u/s 115JB of the I.T. Act, 1961. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that the assessee has declared Revenue from operation of Rs.20,82,70,500/- but declared income from business by estimating 10% profit on total expenditure incurred for the year. The Assessing Officer further noted that the assessee could not file books of account and also failed to produce any evidence in

respect of expenditure claimed. Therefore, considering the nature of the business of the assessee, the books of account has been rejected and income from business has been estimated by adopting 8% net profit on total revenue from operations which works out to Rs.1,66,61,640/-. The Assessing Officer further noted that the assessee has declared other income of Rs.2,46,47,807/- which includes estimated profit on construction expenses of Rs.1,28,33,051/- other income being discount and incentives received from suppliers of Rs.1,13,60,400/- and interest received from fixed deposits of Rs.75,200/-. The Assessing Officer further noted that as per the information furnished by the assessee, the assessee has estimated net profit @ 10% on construction expenses incurred on 4 projects and thus, by taking note of the fact that the above expenditure have not passed on to the P&L Account has estimated profit from construction expenses and credit into P&L Account by the assessee has been treated as income from business and added separately. Further, the Assessing Officer observed that the assessee declared income under other income sub head "other income" being discount and incentive received from suppliers for the financial year 2011-12 and earlier years and opined that the incentives received for the financial year 2011-12 relevant to A.Y 2012-13 is not separately added because the income has been estimated on total turnover declared by the assessee. However, the incentives received for earlier years to Rs.38,13,276/- has been treated as income from other sources and made separate

addition. The Assessing Officer had also made separate addition for interest received from fixed deposit of Rs.75,200/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated its arguments made before the Assessing Officer and submitted that right from the beginning the assessee is following a method of accounting wherein the income from business has been estimated @ 10% on total construction expenses and the same has been accepted by the Department. Therefore, unless there is change in facts, the Department cannot take a different view for the impugned A.Y. The assessee had also submitted that the Assessing Officer is erred in estimating 8% profit on income from operations and making separate addition from income from other sources. The learned CIT (A) after considering the relevant submission and also taken note of various reasons given by the Assessing Officer rejected the argument of the assessee and sustained the addition made by the Assessing Officer regarding estimation of profit from business and separate additions made for income from other sources.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) erred in sustaining the addition made by the Assessing Officer towards estimation of 8% profit on income from operation without appreciating the fact that the assessee right from the beginning has offered income from business by estimating 10% profit on construction expenses and the same has been accepted by the Department. The learned Counsel for the assessee further submitted that assuming for a moment but not admitting the Assessing Officer is right in estimating 8% profit on income from operations, but the Assessing Officer is erred in making separate addition towards estimated profit of 10% on total construction expenses separately even though he has finally determined the income from business on the basis of income from operations. The learned Counsel for the assessee further submitted that the Assessing Officer is erred in not considering the incentives and discount received by the assessee from the suppliers pertains to purchase made for earlier years as part of business receipts for the purpose of estimation of net profit. The learned Counsel for the assessee further took us to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Chopra Brothers India (P) Ltd reported in (2001) 252 ITR 412 and Circular No.29D(XIX)-14 dated 31.08.1985 issued by the CBDT and submitted that, even after estimation of net profit from business deduction towards depreciation should be separately allowed. Therefore, submitted that a direction may

be given to the Assessing Officer to allow deduction towards depreciation allowances separately.

7. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the Assessing Officer has rightly estimated 8% profit from income from operations, because the method followed by the assessee for determining the income from business is not in accordance with the prescribed method of accounting. Further, the Assessing Officer is also right in making separate addition towards estimated profit on total construction expenses of 4 projects, because this is a separate stream of business of the assessee. The learned DR referring to the financial statement submitted that the assessee has declared income from operation from sale of flats and also estimated profit from construction expenses. The Assessing Officer after considering the relevant facts has rightly made addition towards estimation of profit on construction expenses. The learned DR further submitted that, incentives and discount received from suppliers on raw material or purchases cannot forms part of sale turnover of the assessee to estimate net profit. Therefore, the Assessing Officer has rightly assessed incentives and discount as income from other sources and their order should be upheld.

8. The learned DR further submitted that, as regards deduction on depreciation and interest separately, the Assessing Officer has estimated net profit of 8% which include net of all

expenses including depreciation and interest. Therefore, no separate deduction should be allowed in respect of depreciation. The case law relied upon by the assessee and relevant particular circular is on the issue of estimation of gross profit and further deduction towards depreciation allowances and the same cannot be applied to the assessee.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that although the assessee realized sales proceeds, but determined income from business and profession by estimating 10% project on total construction expenses incurred on various projects. Although the appellant claims that said method is followed for earlier A.Ys and the Department has accepted the method followed by the assessee for assessing the income from business, but in our considered view, the method of accounting followed for determining the income from business is not in accordance with the prescribed accounting policies and standard. Therefore, we are of the considered opinion that the Assessing Officer is right in rejecting the method of accounting followed by the assessee to estimate income from business and further estimating 8% net profit on income from operations.

10. As regards the argument of the assessee that once profit from business has been estimated on the basis of income

from operations, then income estimated by the assessee on construction expenditure and credited into P&L Account cannot be considered separately, we find that there cannot be estimation of profit on income and expenditure. The Assessing Officer having accepted the fact that the method followed by the assessee for determining the income from business is not in accordance with the law and having chosen income-based estimation of profit, he ought not to have made separate addition for estimation of profit on construction expenses, because this amounts to blowing hot and cold together and not in accordance with the prescribed method for determining the income. Therefore, we direct the Assessing Officer to delete the separate addition made towards estimation of profit on construction expenses amounting to Rs.1,28,33,051/-.

11. In so far as separate addition towards income from other sources being incentive and discount received from purchases, in our considered view, any discount/rebate or incentive received for purchases is goes to reduce the cost of the assessee or increase the sales revenue and thus, the same partakes the nature of business receipts forming part of turnover or income from operations. Therefore, the same should be considered for the purpose of estimation of profit. Therefore, we direct the Assessing Officer to include incentive and discount received for earlier A.Ys amounting to Rs.38,13,276/- to the income from operations and estimate 8% profit.

12. In so far as the argument of the assessee for separate deduction towards depreciation and interest from net profit estimated from sales or income from operations, in our considered view, the Assessing Officer after considering the relevant financial statements filed by the assessee has adopted reasonable rate of 8% profit on income from operations which is net of all expenses including interest on depreciation. Therefore, the argument of the assessee in light of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Chopra Brothers India (P) Ltd reported in (2001) 252 ITR 412 and Circular No.29D(XIX)-14 dated 31.08.1985 issued by the CBDT devoid of any merit for the simple reason that although the Hon'ble P&H High Court in the above case has taken a view that even in case of estimation of profit, no bar in allowing deduction for depreciation and which is further supported by the Circular issued by the Board, we are of the considered view that the said circular speak about the estimation of gross profit and further allowance of depreciation in case relevant particulars have been furnished by the assessee. In the present case, the Assessing Officer has recorded a categorical finding in light of evidences filed by the assessee that the net profit estimated on sales turnover is net of all expenses including depreciation and said finding is not controverted by the assessee with necessary evidences. In our considered view, the argument of the assessee for further deduction towards interest and on depreciation is not acceptable. Therefore, we reject the grounds taken by the assessee on this ground.

13. To sum up, the estimation of 8% profit on income from operations is upheld, separate addition made by the Assessing Officer towards estimation of net profit on construction expenses is deleted. Further, the Assessing Officer is directed to include the incentives received on purchases, in income from operation for the purpose of estimation of net profit. Finally, the ground of the assessee for separate deduction towards interest and depreciation is rejected.

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

Order pronounced in the Open Court on 3rd July, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 3rd July, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 16(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order