

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. 617/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2016-17)

MAA HIGHWAYS Hyderabad PAN:AAIFM0756B (Appellant)	Vs.	Dy. C. I. T. Central Circle 2(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri P Murali Mohan Rao, CA		
राजस्व द्वारा / Revenue by: Smt. Sheetal Sarin, DR		
सुनवाई की तारीख / Date of hearing: 11/07/2024		
घोषणा की तारीख / Pronouncement: 14/08/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 29.09.2023, of the learned CIT (A)-12, Hyderabad, relating to A.Y.2016-17.

2. The assessee raised the following grounds:

“1. The order passed by the Ld. CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The Ld. CIT(A) erred in partly allowing the appeal.

3. *The Ld. CIT(A) ought to have annulled the assessment made u/s 144 r.w.s. 147 of the IT Act, 1961 dated 30.03.2022.*

4. *The Ld. CIT(A) erred in dismissing Ground No. 3 taken before him.*

5. *The Ld. CIT(A) erred in not considering the Rectification Petition filed u/s 154 of the Act dated 06.04.2022 requesting to rectify the turnover of the firm of Rs. 22,31,24,260/- which is wrongly taken in the assessment order as Rs. 58,00,87,847/-.*

6. *The Ld. CIT(A) ought to have appreciated that the AO erred in completing the assessment without providing sufficient opportunity to the assessee which is against the principles of natural justice.*

7. *The Learned CIT(A) ought to have appreciated the fact that the AO has reopened the assessment u/s 147 without performing any necessary enquiries or inspection which is against the provisions of the IT Act and which is against the principles of Natural justice.*

8. *The Ld. CIT(A) erred in not considering the fact that the AO has passed the order without actually considering the facts of the case and submissions made by the assessee which is against the provisions of law and principles of natural justice.*

9. *The Ld. CIT(A) erred in directing the AO to verify the claim of the appellant of actual gross receipts not only from Form No 26AS but "also from other relevant documents."*

10. *The assessee may add, alter, or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal."*

3. The brief facts of the case are that the assessee is a partnership firm. The assessee has not filed its return of income for the A.Y 2016-17. It is engaged in the business of execution of civil contract works. The assessment has been subsequently reopened on the ground that income chargeable to tax had

escaped assessment on account of non-filing of return of income, even though the total income of the assessee had exceeded the maximum amount which is not chargeable to tax. According to the Assessing Officer, information available from the Department, it is ascertained that during the year under consideration, the assessee is in receipt of civil contract receipts to the tune of Rs.58,00,87,847/-. Accordingly, notice u/s 148 of the Act dated 30.03.2021 was issued and served on the assessee. In response to the said notice, the assessee has not filed its return of income. The case was selected for scrutiny. During the course of assesment proceedings, the Assessing Officer called upon the assessee to file necessary evidences and also explain why assessment should not be completed by considering the turnover of Rs.58,00,87,847/-. Since the assessee has not filed any return, the Assessing Officer has completed best judgment u/s 144 r.w.s. 147 of the I.T. Act, 1961 on 30.03.2022 and determined the total income at Rs.4,64,07,030/- by estimating 8% profit on total contract receipts of Rs.58,00,87,847/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee contested estimation of 8% profit on total contract receipts of Rs.58,00,87,847/- and filed certain evidences, including Form 26AS and claimed that as per the updated Form 26AS, the gross receipts for the year under consideration is only Rs.22,26,58,414/-. The learned CIT (A) after considering relevant submission and also taken note of Form 26AS filed by the

assessee, directed the Assessing Officer to estimate 5% profit on gross contract receipts received by the assessee from the main contractor M/s. Madhucon Projects Ltd subject to verify the claim of the appellant of gross receipts from Form 26AS and other relevant documents.

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 directing the Assessing Officer to estimate 5% profit on gross contract receipts received from main contractor M/s. Madhucon Projects Ltd on the basis of Form 26AS and other relevant documents even though the assessee made it very clear that as per the updated Form 26AS, the turnover of the assessee for the year under consideration was at Rs.22,31,24,260/-. The learned Counsel for the assessee referring to the Form 26AS submitted that the main contractor M/s. Madhucon Projects Ltd has paid total amount of Rs.22,31,24,260/- and said payments are reported in Form 26AS for financial year 2015-16 relevant to A.Y 2016-17. Although they have booked various payments, but the same have been subsequently rectified by filing a corrected statement which can be noticed from Form 26AS, where the number of entries has been reversed. Further, although the appellant in reply to notice u/s 148 claims that it has received gross receipt of Rs.58,00,87,847/-, but the said amount includes payment made

to other entities and the assessee without noticing the revised Form 26AS has considered total payment received from main contractor including payment received by the other group entities and stated that it has received total contract receipt of Rs.58,00,87,847/-. But, fact remains that as per Form 26AS, the appellant has received only Rs.22,31,24,260/-. Although the appellant has filed all the details, the Assessing Officer has considered total gross receipts of Rs.58,00,87,847/-. The learned CIT (A) having accepted the contention of the assessee that the net profit of 5% should be adopted on gross contract receipts, but erred in directing the Assessing Officer to consider the turnover as per Form 26AS and other relevant documents. Therefore, he submitted that a suitable direction may be given to the Assessing Officer to estimate 5% profit on total turnover as reported in Form 26AS.

7. The learned DR, on the other hand, supporting the orders of the authorities below submitted that there is no cause of action for the assessee because, the learned CIT (A) has directed the Assessing Officer to verify and adopt 5% profit on gross contract receipts as per Form 26AS and other relevant documents. The assessee can very well explain the facts before the Assessing Officer by furnishing necessary books of account and other details to justify its claim that it has received only contract receipt of Rs.22,31,24,260/-. Therefore, he submitted that there is no merit in the appeal filed by the assessee and the same should be dismissed.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer estimated 8% profit on gross contract receipt of Rs.58,00,87,847/-. The learned CIT (A) accepted the contention of the assessee for estimating 5% profit on gross contract receipts, however, directed the Assessing Officer to verify the claim of the assessee of gross contract receipt of Rs.22,31,24,260/- based on Form 26AS filed for the relevant A.Y and any other relevant documents. It is the contention of the assessee that the turnover of the appellant firm for the impugned A.Y under consideration is only Rs.22,31,24,260/- which is evident from the updated form 26AS filed for the relevant A.Y. We have gone through Form 26AS filed by the appellant for the A.Y 2016-17 and as per said form 26AS, the gross contract receipt of the appellant for the year under consideration is only at Rs.22,31,24,260/- and TDS deposit of Rs.44,62,485/-. Once the gross receipts as per Form 26AS is only at Rs.22,31,24,260/-, then it is incorrect on the part of the Assessing Officer to adopt gross receipt of Rs.58,00,87,847/- without any evidence to suggest that the assessee has received gross contract of the said amount. Although the appellant in their letter dated 23.11.2021 claimed that it has received contract receipt of Rs.58,00,87,847/-, but the same has been explained by filing updated Form 26AS and claimed that there were several payments made to other group entities, which were reported in the PAN Number of the appellant and the same has been subsequently rectified by

reversing the payments relate to other parties. We find that in Form 26AS, number payments has been booked on various dates and the same has been subsequently reversed. If we go by the entries in Form 26AS, in our considered view, the argument of the appellant that the main contractor M/s. Madhucon Projects Ltd has filed revised statement of TDS and corrected misreporting of turnover in the name of the assessee and the same has been finally updated in Form 26AS appears to be bonafide and genuine. Therefore, we are of the considered view that, when the appellant is able to file necessary evidences including Form 26AS to justify the turnover reported for the year under consideration at Rs.22,31,24,260/-, then the Assessing Officer is incorrect in adopting the turnover of Rs.58,00,87,847/- only on the basis of letter filed by the assessee. Although the learned CIT (A) has in principle agreed with the contention of the assessee in respect of rate of profit and turnover, but erred in directing the Assessing Officer to verify the claim of the assessee in light of Form 26AS and any other relevant documents. In our considered view what is the other relevant documents is not explained by the learned CIT (A). In absence of any evidences or other relevant documents which supports the contention of the Assessing Officer that the appellant has received gross contract receipt of Rs.58,00,87,847/-, in our considered view the arguments of the assessee that it has received gross contract receipt of Rs.22,31,24,260/- needs to be accepted. Thus, we reverse the findings of the learned CIT (A) and direct the Assessing Officer to estimate the net profit @ 5% on

total contract receipt of Rs.22,31,24,260/- as per Form No.26AS filed by the assessee for the A.Y 2016-17.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 14th August, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 14th August, 2024.

Vinodan/sps

Copy to:

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1	MAA Highways C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
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3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order