

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

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 144/PAT/2018  
Assessment Year: 2014-2015**

***Deputy Commissioner of Income Tax,..... Appellant  
Circle-3, Darbhanga,  
Income Tax Office,  
Lal Bagh (Opposite Old Bus Stand),  
Darbhanga (Bihar)-846004***

**-Vs.-**

***M/s. Bhawani Construction & Co.,.....Respondent  
Andhrathadi, Mahrail, Madhubani,  
Bihar-847211  
[PAN:AAAJB0575H]***

**Appearances by:**

*Shri Ashwani Kumar, Sr. D.R., appeared on behalf of the  
Revenue*

*Shri Sanjeev Kr. Mishra, A.R., appeared on behalf of the  
assessee*

Date of concluding the hearing : September 11, 2024

Date of pronouncing the order : September 12, 2024

**O R D E R**

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

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

Muzaffarpur dated 22<sup>nd</sup> March, 2018 passed for assessment year 2014-15.

2. The Revenue has taken twelve grounds of appeal. However, its grievances revolve around two issues, namely  
1d. CIT(Appeals) has erred in entertaining fresh evidence in violation to Rule 46A and thereafter directing the 1d. Assessing Officer to determine the taxable income of the assessee @ 6% of the total turnover.

3. Brief facts of the case are that the assessee is a Civil Contractor. It has filed return electronically on 31.03.2015 declaring total income at Rs.25,91,280/-. It has claimed refund of Rs.12,70,620/- against TDS of Rs.18,96,224/-. The 1d. Assessing Officer has examined various issues. He has recorded a finding that the assessee has gross contract receipts of Rs.8,70,56,410/-. Thereafter he made reference to the TDS details and other amounts. Thereafter 1d. Assessing Officer has noticed various figures from the books of account of the assessee, which do not exhibit any reconciliation with each other and made an addition of Rs.2,38,29,800/-. This addition has been worked out by making disallowance out of various expenses.

4. On appeal, 1d. CIT(Appeals) has recorded a finding that it is not practically possible to deduce the true income

of the assessee on the basis books of account produced by the assessee. Therefore, ld. CIT(Appeals) has rejected the book result and held that income of the assessee is to be estimated by taking a profit rate at 6% of the total turnover.

5. The Revenue is aggrieved with this action of ld. CIT(Appeals) and filed the present appeal.

6. With the assistance of ld. Representatives, we have gone through the record carefully. A perusal of the assessment order would reveal that reference to various figures, namely royalty, work extension and others, security deposit, purchase of raw material, labour expenses, do not exhibit a coherence between each other. It is also pertinent to note that it is highly improbable that out of gross contract receipt of Rs.8,70,56,410/-, an assessee could earn profit of Rs.2.38 crores, which has been worked out by the ld. Assessing Officer by making reference to various figures. In such a situation, the only possible way to determine the true income of the assessee is to estimate the profit element in the alleged gross turnover. The ld. CIT(Appeals) has made reference to the decision of the Hon'ble Patna High Court in the case of Prasad Construction & Co. -vs.- CIT reported in (2017) 388 ITR 579 before adopting the profit ratio at 6% of the gross turnover. Therefore, we are of the view that the ld. 1<sup>st</sup>

Appellate Authority has taken plausible view, which do not call for any interference at the end of the second appellate authority.

**7. In view of the above, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 12.09.2024.

Sd/-

Sd/-

**(Manish Borad)**  
**Accountant Member**

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

**Kolkata, the 12<sup>th</sup> day of September, 2024**

*Copies to :(1) Deputy Commissioner of Income Tax,  
Circle-3, Darbhanga,  
Income Tax Office,  
Lal Bagh (Opposite Old Bus Stand),  
Darbhanga (Bihar)-846004*

*(2) M/s. Bhawani Construction & Co.,  
Andhrathadi, Mahrail, Madhubani,  
Bihar-847211*

*(3) Commissioner of Income Tax (Appeals),  
Muzzafarpur;*

*(4) Commissioner of Income Tax- ;  
(5) The Departmental Representative  
(6) Guard File*

TRUE COPY

By order

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

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