

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH  
VIRTUAL HEARING AT KOLKATA**

**Before**  
**Dr. Manish Borad, Accountant Member**  
**&**  
**Shri Pradip Kumar Choubey, Judicial Member**

**I.T.A. No.210/Pat/2023**  
**Assessment Year: 2015-16**

***Jai Maa Bhawani Projects Pvt. Ltd. .... Appellant***  
***G1A, Narayan Villa Apartment,***  
***East Gandhi Murti, Patel Nagar,***  
***Bihar-800023.***  
***(PAN: AACCJ5141J)***

***Vs.***

***ACIT (OSD), Ward-2(1), Patna ..... Respondent***

**Appearances by:**

*Shri Manish Rastogi, Advocate appeared for Appellant*  
*Shri Ashwani Kumar, Sr. DR appeared for Respondent*

Date of hearing : 25.07.2024

Date of pronouncing the order : 12.09.2024

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by ld. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. "CIT(A)"] dated

23.12.2022 arising out of the assessment order framed u/s 144 of the Act by ACIT (OSD), Ward-2(1), Patna dated 16.12.2017.

2. Registry has informed that the appeal of the assessee is time barred by 123 days. Condonation of delay application dated 24.06.2023 is placed in file. The main reason for non-appearance is that the notices of hearing were sent by Ld. CIT(A) on the e-mail ID of the erstwhile Chartered Accountant Mr. Navin Kumar with whom assessee had no contact or relation from 26.11.2014 onwards. It was only when the assessee was served with the physical copy on 08.05.2023 that he came to know about the passing of the order by Ld. CIT(A). We find the reason given by the assessee is reasonable and though Ld. DR opposed the condonation of delay, we in the interest of fair justice condone the delay of 123 days and admit the appeal for adjudication.

3. Though the assessee has raised various grounds of appeal but mainly two grievances are involved, firstly that assessee failed to get due opportunity before the lower authorities to file the documents and secondly, that Ld. CIT(A) erred in confirming the addition of Rs.40,05,170/- calculated by estimating profit @ 8% on the work-in-progress.

4. At the outset, Ld. Counsel for the assessee submitted that the order of the Ld. AO is best judgment assessment framed u/s. 144 of the Act and assessee had no fair opportunity to appear before the Ld. AO and even before Ld. CIT(A) since the notice of hearing was issued on a wrong e-mail ID assessee had no possibility to plead its case on merit. It is further submitted that the Ld. AO has estimated the profit @ 8% on the work-in-

progress which is totally incorrect and assessee being a private limited company has all relevant details to prove that impugned addition is uncalled for and, therefore, the matter may please be restored to the file of the Ld. AO for fresh adjudication.

5. On the other hand, Ld. DR supported the orders of the lower authorities.

6. We have heard Ld. DR and perused the records placed before us. We observe that the assessee is a private limited company engaged in the business of builder developer. Income of Rs.10,78,290/- declared in the return of income filed electronically on 31.03.2016 pertaining to AY 2015-16. Subsequently, case was selected for limited scrutiny assessment under CASS followed serving of valid notices u/s. 143(2) and 142(1) of the Act. Assessee failed to appear on the various dates of hearing. Ld. AO proceeded to the best judgment assessment u/s. 144 of the Act. Audited Balance sheet was available with the AO and he on the basis of his own calculation calculated the work-in-progress from real estate business at Rs.5,00,64,463/- which in his view represented the investment in the projects during the year. Thereafter, Ld. AO without referring to any specific provisions of the Act, applied the percentage completion method and calculated 8% net profit on the work-in-progress and made an addition of Rs.40,05,170/-.

7. We also notice that assessee did not get any opportunity before the Ld. CIT(A) on account of wrong e-mail ID mentioned in Form 35. Before us, assessee has furnished the copy of audit reports for AY 2014-15, 2015-16 and 2016-17 demonstrating

that the assessee is offering the income on the basis of completed contract method and that the revenue has been offered in the year when goods are sold. These details have been furnished in the form of paper book filed on 23.07.2024 and 24.07.2024. Considering these documents and being fair to both the parties, we deem it appropriate to restore the issue raised before us to the file of the Ld. AO for *de novo* adjudication to be carried out after affording reasonable opportunity of being heard so that the assessee can file all necessary details and documents before the Ld. AO and the AO can decide the matter in accordance with law. Accordingly, impugned finding of Ld. CIT(A) is set aside and grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 12th September, 2024.

Sd/-

(Pradip Kumar Choubey)  
Judicial Member

Sd/-

(Manish Borad)  
Accountant Member

Dated: 12<sup>th</sup> September, 2024

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

- 1. Appellant – M/s. Jaimaa Bhawani Project Pvt. Ltd.**
- 2. Respondent – ACIT (OSD), Ward-2(1), Patna**
- 3. CIT(A), NFAC, Delhi**
4. CIT,
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata