

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI GEORGE GEORGE K., VP
AND SHRI INTURI RAMA RAO, AM**

**ITA Nos. 185 & 184 /Coch/2025
Assessment Year: 2016-17**

AKM Erectors Appellant
15/452, Alakuzhy House, Puliypillimukal Road
Ambalamedu P.O., Ernakulam 682303
[PAN: ABBFA2306H]

vs.

Commissioner of Income Tax Respondent
C.R. Building, I.S. Press Road, Kochi 682018

Appellant by: Smt. Parvathy Ammal, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 08.04.2025
Date of Pronouncement: 13.05.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the orders of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 02.09.2024 in quantum appeal and 03.09.2024 in penalty appeal for Assessment Year (AY) 2016-17.

2. Brief facts of the case are that the appellant is a partnership firm engaged in the business of execution of contracts. The appellant firm had not filed return of income under the provisions of section 139(1) of the Income Tax Act, 1961 (the Act). The Commissioner of

Income Tax, Cochi (hereinafter called "the AO") based on the information that the appellant had a substantial contract receipts formed an opinion that income escaped assessment to tax. Accordingly notice u/s. 148 of the Act was issued on 30.03.2021. The appellant neither complied with the notice u/s. 148 nor notice issued u/s. 142(1) of the Act. In the circumstances the AO, had proceeded with framing of best judgement assessment thereby bringing to tax the entire contract receipts of Rs. 3,22,93,096/- vide order dated 28.03.2022 passed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act.

3. Being aggrieved, an appeal was filed before the CIT(A) contending that the AO had ignored the return of income filed in response to notice u/s. 148 of the Act disclosing income of Rs. 14,54,395/- filed on 24.03.2022 and also challenged the action of the AO in taxing the entire contract receipts of Rs. 3,22,93,096/-. The learned CIT(A), after due consideration of the submission made before him held that the amount in question represents the contract receipts as evident from the information contained in Form 26AS of the appellant. Therefore, the entire receipts cannot be brought to tax as undisclosed income of the appellant. In the circumstances directed the AO to restrict the addition @12% of the contract receipts. Thus, the appeal filed by the assessee was partly allowed by the CIT(A).

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. At the outset we find that there is a delay of 118 days in filing the appeals. The appellant filed a petition along with an affidavit seeking condonation of delay in filing the appeal, wherein it is stated that orders passed by the CIT(A) were not received by the appellant. As soon as the Tax Consultant of the appellant noticed the order on the portal, immediately steps were taken to file the appeals. Therefore, the delay is not willful or deliberate, thus it is prayed that the delay in filing the appeal may be condoned and the appeal may be admitted for adjudication. On a perusal of the averments made in the condonation petition, it is evident that the appellant is prevented by reasonable cause from filing the appeal. Therefore, we condone the delay and admit the appeal for adjudication.

6. The learned counsel for the assessee submits that belated return filed in response to notice u/s. 148 of the Act was not taken into consideration by the AO. It is, further submits that estimation of gross profit by the CIT(A) at 12% is unreasonable. It is further submitted that taking guidance from the provisions of section 44AB of the Act profit can be estimated only at 8% of the gross receipt. In support of this the appellant had relied on certain decisions of the Coordinate Bench.

7. On the other hand, the ld. Sr. DR vehemently opposed the submissions made by the learned counsel for the assessee. It is

submitted that the appellant did not cooperate with the AO during the course of assessment proceedings. The CIT(A) is justified in estimating the profit at 12% which is not excessive but reasonable.

8. We have heard rival contentions and perused the material available on record. The issue that arise for our consideration is whether the CIT(A) was justified in estimating the profit at 12% of the gross receipts of the assessee. We find that the AO had passed an exparte assessment order as the appellant had failed to comply with the notice issued u/s. 148 of the Act by treating the entire contract receipts as income of the appellant. No doubt, the AO was justified in resorting to best judgement assessment. However, the approach adopted by the AO in taxing the entire contract receipts as taxable income is unreasonable and arbitrary. Even in the case of best judgement assessment, assessment of income should be based on evidence and estimation cannot be subjective. It must be honest guess work based on the material before the AO. It is trite law that when the AO makes an assessment to the best of his judgement against the assessee who is in default in supplying information, the AO should not act dishonestly or vindictively. The AO must make a fair estimate of proper figure of assessment and for this purpose he must take into consideration legal knowledge and assessee's circumstance and his knowledge of previous assessment of the assessee and other matters which he may think assist him in arriving at a fair and proper estimation, though there must be a guess work in the assessment it must be honest guess work and the assessment

must be based on adequate and relevant material. Reference in this case can be made on the decision in the case of Abdul Baree Chowdhury v. CIT [1937] 5 ITR 170 PC. This decision was subsequently followed by several High Courts in following cases: -

- i. CIT v. Popular Electronic Co. P. Ltd. [1993] 203 ITR 630 (Cal)
- ii. Baliah v. CIT [1965] 56 ITR 182 (Mys)
- iii. Muniratham Mudaliar v. CIT [1964] 51 itr 644 (Mad)
- iv. Kodidasn Appalaswamy & Suryanarayana v. CIT [1962] 46 ITR 735 (AP)
- v. Chouthmal Agarwalla v. CIT [1962] 46 ITR 262 (Assam)
- vi. Swamy Bros v. CIT [1958] 34 ITR 123 (Ker)
- vii. CIT v. Chopra Bros (India) Pvt. Ltd. [2001] 252 ITR 412 (P&H)

9. In this case the CIT(A) merely estimated the taxable income at 12% of the gross receipts. On appeal before the CIT(A), while estimating the profit at 12% of the contract receipts, the CIT(A) neither referred to any material nor referred to the previous assessment in assessee's own case. Thus, we are of the considered opinion that estimation of 12% is arbitrary and the AO is the best judge in estimating the profits. In the above circumstances, we are of the considered opinion that the matter requires remand to the file of the AO to estimate the income having regard to the previous assessment of the assessee and the comparable cases in the same line of business. Thus, the appeal by the assessee is partly allowed.

10. Since the quantum appeal the matter is sent back to the file of the AO, the penalty appeal also restored in terms of section 271(1)(a) of the Act.

11. In the result, the appeals filed by the assessee stand partly allowed.

Order pronounced in the open court on 13th May, 2025.

Sd/-
GEORGE GEORGE K.
VICE PRESIDENT

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 13th May, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin