

constructions. The return of income for AY 2022-23 was filed on 26.09.2022 declaring Nil income. Against the said return of income, the assessment was completed by ITO, Ward-1(1), Thiruvananthapuram (hereinafter called "the AO") vide order dated 21.03.2024 passed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961 (the Act) at a total income of Rs. 6,12,03,924/- by holding that the appellant could not furnish evidence in support of the expenditure incurred on commission, etc. and treated the same as unexplained expenditure u/s. 69C of the Act.

3. On appeal before the CIT(A), the CIT(A) confirmed the addition u/s. 37 of the Act.

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

5. The learned counsel for the assessee submitted that even in exparte assessment high pitched assessment cannot be made by disallowance of expenditure of Rs., 6,12,03,924/-. It has resulted determining assessed income at 46.8%, which is exorbitantly high in civil construction business. Therefore, he submitted that the AO ought not have resorted to adhoc disallowance without rejecting the books of account. He further submitted that based on the spirit of provisions of section 44AD income may be estimated at 8%.

6. On the other hand, the learned Sr. DR supporting the order of the authorities submitted that no interference is called for.

7. We have heard the rival contentions and perused the material available on record. The short issue that arises for our consideration is whether the CIT(A) was justified in confirming the addition of Rs. 6,12,03,924/- by disallowing the expenditure incurred on labour. Admittedly, the appellant is in the business of execution of construction of buildings for private individuals. The turnover of the appellant company is stated to be Rs. 13.12 crores and books of accounts have been maintained and audited u/s. 44AB of the Act. However, the appellant could not discharge the onus of substantiating the expenditure incurred on labour charges of Rs. 6,12,03,924/- during the course of assessment proceedings as well as before the CIT(A). It is stated that this expenditure is incurred on daily payment basis in cash not exceeding Rs. 20,000/- per person in a day. It cannot be ruled out that without incurring any expenditure on labour, construction of building can be completed. Therefore, in our considered opinion the AO ought to have resorted to estimation of profit based on the comparable instances in similar line of business. Otherwise disallowing the entire labour expenditure would amount to gross profit of Rs. 46.8%, which unreasonably high and amount to high pitched assessment. In our considered opinion, though the provisions of section 44AD has no application to the appellant. However, we are of the considered opinion that income may be estimated @12% on gross turnover of Rs. 13.12 crores and addition on account of labour charges of Rs. 6,12,03,924/- may be deleted.

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

Order pronounced in the open court on 27th June, 2025.

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 27th June, 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

Assistant Registrar
ITAT, Cochin