

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

ITA No.2014/Hyd/2018 (Assessment Year : 2013-14)		
M/s. TBPR Infra Projects Pvt. Ltd., # 205, Indraprastha Apartments, Opp. ESI Hospital, Near AG Colony Water Tank, Erragadda, Hyderabad. PAN AACCT 6542K	Vs.	Asst. Commissioner of Income Tax, Circle 2(2), Hyderabad.
Appellant		Respondent

Appellant By : Shri Mohd. Fazal.

Respondent By : Shri Sunil Kumar Pandey (D.R)

Date of Hearing : 25.03.2021.

Date of Pronouncement :03.05.2021.

ORDER

Per Shri S.S. Godara, J.M. :

This assessee's appeal for the Asst. Year 2014-15 arises from the Commissioner of Income Tax (Appeals)-2, Hyderabad's order dt.13.12.2017 passed in the case of Appeal

No.0013/CIT(A)-2/Hyd/2016-17 in the proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal :

“ 1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, income was estimated at Rs.5,17,89,991/- being 8% of the gross receipts of Rs.5,50,92,786/-.

3. The learned Commissioner ought to have appreciated that the assessee has allotted most of the work to the subcontractors, therefore, there is no scope of earning income at 8% of gross receipts.

4. The learned Commissioner ought to have appreciated in the earlier years which are accepted by the Department, the profit rate never touched the rate of 8%, therefore, the same rate should have been accepted as accepted in the earlier years.

5. The learned Commissioner erred in not following the rationale of the jurisdictional ITAT decision in the case of M/s. Teja Constructions Vs ACIT, 129 TTJ 0057 (Hyd-Trib).

6. The learned Commissioner in not allowing the depreciation as claimed by the assessee at Rs.67,89,938/- which is allowable even when the profit is estimated as per the Board Circular No.29D dt: 31.08.1965.

7. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

3. Coming to the former issue of estimation of assessee's profit @ 8% qua gross receipts of Rs.64.73 Crores in civil construction businesses, the CIT(Appeals) lower appellate discussion confirming the A.O's action to this effect read as under :

“ 2. The appellant company is engaged in the business of executing civil contract works from the State Government (primarily of modernization of canals and related irrigation works). The appellant declared total income of Rs. 3.30 crores in the return of income filed on a turnover of Rs. 64.73 crores. During the course of assessment proceedings, the AO sought various details including the production of books of accounts, bills and vouchers, etc. Since the appellant failed to produce the

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books of accounts, bills and vouchers etc., the AO rejected the books of accounts and estimated income @ 8% of the gross receipts working out to Rs. 5,17,89,991/- and depreciation was deemed to have been allowed.

3. The above action of the AO was contested in three effective grounds of appeal (Grounds No. 3,2 and 6 of appeal). The submissions made by the appellant in this regard are summarized as under:

3.1 The total turnover of Rs. 64.73 crores consists of receipts on account of execution of contracts of Rs. 33.43 crores and execution of sub-contracts of Rs. 31.30 crores. Out of the contract receipts of Rs. 33.43 crores, sub contracts were given for Rs. 31.86 crores and the appellant executed works of only Rs. 1.75 crores. As regards the receipts from sub-contracts of Rs. 31.30 crores, further sub-contracts were given for Rs. 5.76 crores and the appellant executed works of only Rs. 25.53 crores (The AR furnished tabular form of the details of these works).

3.2 The AO should have analysed the nature of the works executed by the appellant before estimating the profit @ 8% of turnover, net of depreciation. Referring to the judgment of ITAT, Hyderabad in the case of M/s. Teja Constructions Vs ACIT (2010) 129 TTJ0057, the AR submitted that in respect of main contracts executed by the appellant, the profit should have been estimated @ 9% and in respect of sub-contracts, the profit should have been estimated @ 8%. The AR submitted the same in a tabular form as under :

Particulars	Gross Bills	Rate of profit	Income (Amount in Rs.)
Main Contracts Receipts – Own Execution	15,728,504	9%	14,15,565
Sub Contracts Receipts – Own Execution	255, 363,885	8%	1,02,14,555

3.3 In respect of back-to-back sub-contracts, the appellant received 2% commission only in respect of 4 sub-contracts and in respect of the remaining, even

2% commission was not received. The AR, therefore, requested to adopt the income as per the table given above and determine the assessed income accordingly.

4. I have carefully considered the issue and submissions made by the AR. It is evident from the submissions that the appellant has not contested the rejection of books of accounts and estimation of profit. If the profit as worked out by the AR is taken (as per the Table in Para no. 3.2 above), then it will come to about Rs. 1.50 crores (Rs. 0.14 crores + Rs.1.02 crores + back-to-back commission @ 2% of Rs. 17 crores amounting to Rs. 34 lakhs). However, it is seen that the appellant itself admitted total income of Rs. 3,30,72,101/- and filed the return of income accordingly. If the contention of the AR is accepted, then it would result in an absurd situation of assessing/ determining the income at less than 50% of the returned income.

4.1 The appellant is engaged in irrigation contract works of modernization of canals which mainly involves earth works, lining etc. It is well known that the rate of profit in earth work contracts is much higher than normal contracts involving utilization of construction material like cement, steel etc. which consume large part of the cost of the contract. In the building contracts, the major expenditures goes towards cement, steel, bricks etc., where as in earth work and irrigation contracts, it is mostly on labour account including the use of machinery like JCB etc. Accordingly, the margins in irrigation projects, especially on modernization of canals, are higher than the generally accepted profit percentage rate of 8-12% in general civil contracts. Under the given circumstances, the action of the AO in estimating the profit at a conservative rate of 8% in respect of canal works (inclusive of depreciation) cannot be held to be unreasonable. As regards the claim of doing some sub-contracts and giving some other works as sub-contracts made before me, no evidence/ details were furnished. The AR was unable to throw any light as to whether such details along with evidences were filed before the AO or not. In the given facts and circumstances of the case, the estimation of income made by the AO

at 8% of the receipts (including allowance of depreciation) is therefore upheld and the grounds of appeal are dismissed.”

4. Learned counsel’s first argument is that both the lower authorities have erred in law and on facts in assessing the assessee's sub-contract receipts at uniform rate of 8% alike contractual rates having very high profit rate and therefore, the same is not liable to be upheld as per the Tribunal decision in M/s. Teja Construction (supra).

5. Learned counsel next invited our attention to the assessee's detailed paper book in pages 49 to 75 inter alia containing the details of bills received and work allotted to the sub-contractor, percentage of commission, copies of the corresponding ledger accounts and statement showing party-wise sub-contracts; respectively. Learned department representative failed to dispute that all these clinching aspects have nowhere been considered either in the assessment or in the CIT(Appeals) detailed discussion. We, therefore, uphold the learned lower authorities’ action to the limited extent of assessment of 8% of assessee's receipts from civil construction

contracts and remit the remaining sub-contract component receipts as per factual verification to be followed by 5% estimation thereupon in consequential proceedings to the Assessing Officer. It is made clear that the assessee or its authorized representative shall appear before the Assessing Officer on or before 1.9.2021 with all the relevant details of its sub-contracts to be followed by three effective opportunities of hearing at its own risk and responsibility. The assessee's first to fifth substantive grounds are partly allowed for statistical purposes in above terms.

6. The assessee's sixth substantive ground seeks to raise depreciation of Rs.67,89,938 allegedly declined in the course of assessment for the reason that the same does not apply in the case of rejection of books followed by estimation of profits. We, prima facie, notice in this factual backdrop that CBDT Circular No.29D dt.31.08.1965 has already issued necessary directions to the field authorities in taxpayer's favour qua the same. We therefore direct the Assessing Officer to consider the assessee's instant latter issue afresh as per law in the light of foregoing

CBDT's circular. The assessee's sixth substantive ground is accepted for statistical purposes.

7. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open court on 3rd May, 2021.

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

Hyderabad, Dt. 03.05.2021.

Sd/-

(S.S. GODARA)

Judicial Member

* Reddy gp

Copy to :

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2.	ACIT, Cir.2(2), Hyderabad.
3.	Pr. C I T-2, Hyderabad.
4.	CIT(Appeals)-2, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.