

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1404/Hyd/2017
Assessment Year: 2012-13**

Dy. Commissioner of Income-
tax, Circle – 2(1), Hyderabad.

vs. JVK Infra Pvt. Ltd.,
Hyderabad.

PAN – AABCJ 8669C

(Appellant)

(Respondent)

Revenue by : Shri M. Naveen
Assessee by : Shri K.C. Devdas

Date of hearing : 31/05/2018
Date of pronouncement : 08/06/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the Revenue is directed against the order dated 21/04/2017 of CIT(A) – 1, Guntur for AY 2012-13.

2. Briefly the facts of the case are, assessee, a private limited company engaged in the business of execution of civil construction of works, assessee filed its return of income for AY 2012-13 declaring total income at Rs. 1,99,06,668/-. Subsequently, the case was selected for scrutiny through CASS and notices u/s 143(2) and 142(1) were served on the assessee on various dates, but, there was no compliance from the assessee to all the notices issued by the AO. He, therefore, completed the assessment u/s 144 of the Act as under:

2.1 He observed that on perusal of the P&L account, the assessee shown the gross contract receipts to the tune of Rs. 33,20,54,449/- and sale of scrap of Rs. 6,26,440/- under the head income from other

sources. In the absence of books of account and non production of bills and vouchers, the AO estimated the income @ 8% of gross subcontract receipts as business income and sale of scrap was assessed to tax under the head income from other sources and assessed the total income of the assessee at Rs. 2, 71,90,795/- as against the admitted income of Rs. 1,99,06,668/-.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. During the appellate proceedings, the assessee filed additional evidence and the same was forwarded to the AO for remand report by the CIT(A).

4.1 The assessee made the following submissions:

“Assessee declared net profit of Rs. 199.07 lakhs which works out to 5.99%.

Declaration of profit at about 6% on sub-contract works is reasonable.

Assessee relied on the decision of ITAT, Hyderabad Bench in the case of M/s. C. Eswara Reddy & Company ITA NO. 668 & 670/Hyd/2009 wherein it was held that estimation of profit at 8% in the case of contractors and 5% in the case of sub-contractors is reasonable.

In the said decision the ITAT also referred to the decision in the case of Krishna Mohan Constructions ITA No. 116 & 117/Hyd/2007 and also the decision of Special Bench in the case of Arihant Builders in 291 ITR 41 (SB).

In the light of the above, assessee requested that once best judgment assessment has been made u/s. 144 the profits may be reasonably estimated based on the above decisions of the ITAT, Hyderabad.”

5. After considering the submissions of the assessee as well as the remand report of the AO, the CIT(A) observed that coming to the nature of works executed, the AO vide his remand report has

accepted that w.r.t. works taken from MEIL and M/s. Yamne Power Pvt. Ltd., the assessee executed the works in the capacity of subcontractor/sub-sub contractor. W.r.t. works taken from UAN MAX Infra Ltd" AO stated that a copy of work order was only produced before him and hence he could not certify whether the works are executed as a contractor or a sub-contractor. But the very work order mentions that the work is that of the State of Nagaland and the assessee got the work from UAN Max Infra Ltd. This shows that assessee is only sub-contractor. In view of the above observations, the CIT(A) held that the assessee executed all the works in the capacity of sub-contractor, the income returned by the assessee i.e. 5.99% appears to be reasonable. Since the assessee itself submitted that 6% of profit is acceptable, the CIT(A) directed the AO to reduce the estimation of profit at 6% as against 8%.

5.1 As regards taxing of sale of scrap separately, the CIT(A) held that as scrap gets generated from the civil works executed, no separate addition is called for once the net profit/income is estimated.

6. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

"1. The order of the Ld. CIT(A) is erroneous on facts and in law.?"

2. The Ld.CIT(A) erred in estimating the income at 6% as against 8% estimated by the AD, ignoring the jurisdictional ITAT decisions estimating the income as 8% in similar cases ?

3. (The Ld. CIT(A) erred in observing that income from sale of scrap is business income and no separate addition is called for, when income from business is estimated?"

4. Any other ground that may be urged at the time of hearing."

7. Considered the rival submissions and perused the material on record. We notice that the AO in his remand report accepted that assessee has done work contract with M/s MEIL, M/s Yamne Power

Pvt. Ltd. and UAN MAX Infra Ltd. AO himself accepted that M/s MEIL and M/s Yamne Power Pvt. Ltd. are main contractors and assessee is sub-contractor. With regard to UAN, the work order itself disclosed that the work is assigned to assessee by UAN for the work of state of Nagaland. This shows beyond doubt that assessee is only sub-contractor. As per the decisions of ITAT, Hyderabad, it is an accepted principle that main contract business incomes are estimated at 8% and sub-contract incomes are estimated at 5%. However, assessee has declared the income at 6% level, the Id. CIT(A) has accepted the income returned by the assessee. Therefore, order passed by Id. CIT(A) is in consonance with the principles laid down by the ITAT, Hyderabad. We noticed that revenue raised ground No. 2 that Id. CIT(A) should have estimated at 8% since in similar cases, it is estimated at 8% for sub-contracts. But no such cases were brought on record by Id. DR. In the absence of such comparable cases, we dismiss the ground raised by the revenue.

7.1 With regard to ground No. 3, income from scrap sale should be treated as additional income over and above estimation of income, we notice that for sub-contract, normally estimated at 5%, but, in the given case, assessee has already offered 6%, which includes scrap sales. Generally, scraps are generated in the normal course of business and it should be treated as part of business income only. Therefore, this ground of revenue is also dismissed.

8. In the result, appeal of the revenue is dismissed.

Pronounced in the open Court on 8th June, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 8th June, 2018

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Copy to:-

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- 2) *M/s JVK Infra Pvt. Ltd., H.No. Plot No. 320, 5th Floor, East Avenue, Ayyappa Society, Hyd - 081*
- 3) *CIT(A) – 1, Guntur.*
- 4) *Pr. CIT - 2, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*