IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 1350/Hyd/2017		
A.Y. 2013-14		
Income Tax Officer, Ward-15(1), Hyderabad.	Vs.	Kishore Kumar Athota, Hyderabad. PAN: AKYPA 5007 D
(Appellant)		(Respondent)
Assessee by	Sri B. Shanthi Kumar	
Revenue by	Sri DJP Anand, DR	
Date of hearing:	15/06/2021	
Date of pronouncement:	19/07/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-7, Hyderabad in appeal No. 64/CIT(A)-7/2016-17, dated 30/03/2017 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2013-14.

2. The Revenue has raised five grounds in its appeal however, the crux of the issue is that:

> *"The Ld. CIT (A) has erred in estimating the income of the assessee @ 8% on the sub-contract turnover of Rs. 2,93,00,000/- received by the assessee as against the addition made by the ld. AO of Rs. 2,75,00,000/- being the entire sub-contract receipt not found to be genuine and Rs. 18,00,000/- being the amount received from three parties which remained unexplained."*

3. The brief facts of the case are that the assessee is an individual undertaking Civil contracts filed his return of income for the relevant AY on 3/9/2014 admitting total income of Rs. 13,75,000/-. Thereafter, the case was taken up for scrutiny under CASS and the assessment was completed vide order dated 9/3/2016 wherein the ld. AO made addition Rs. 2,75,00,000 towards unexplained income and Rs. 18 lakhs towards unexplained cash credit along with another addition for Rs. 24,304/-.

4. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had disclosed contract receipts amounting to Rs. 2,75,00,000/- from various parties. The assessee furnished certain details of entities for whom he had executed the civil contract however, when the confirmations were called for from those parties by the Ld. AO, there was no response. The assessee has also failed to maintain his books of accounts and other particulars of his income. The Ld AO also noticed lack of evidence for the assessee for having executed such contracts as he had claimed in his return of income. Therefore, Ld. AO came to a conclusion that the assessee had

not executed any civil contract work for any parties and they are bogus transactions may be to help the payees to claim bogus expenditure. Since the assessee had failed to produce sufficient explanation for having executed the contract work, the Ld. AO made an addition of Rs. 2,75,00,000/- towards unexplained income. Further, it was observed by the Ld. AO that the assessee has received Rs. 18 lakhs from three different parties for which the assessee had not produced any convincing explanation therefore, the Ld. AO made addition of the same towards unexplained cash credit.

5. On appeal the Ld. CIT (A) estimated the income of the assessee at 8% on the turnover of Rs. 2,93,00,000/- [Rs. 2,75,00,000 + Rs. 18,00,000] by observing as under:-

> *"4.2. I have considered the assessment order, submissions of the assessee, the documents placed before me and I have also perused the assessment record. The following are the documents available on record, which were filed by the assessee during the assessment proceedings:*
>
> *(i) Copy of Form 26AS*
> *(ii) Copy of ITR Acknowledgement along with computation of income.*
> *(iii) Copy of statement of bank account of the assessee with Axis Bank, HSR layout for the period 01.04.2012 to 31.03.2013.*
> *(iv) A note dt 08.02.2015 regarding the nature of business and basis of Return of Income fled.*
> *(v) Copy of sub-contract agreement with Mis Vasudha Properties Dt ....*
> *(vi) Ledger copy of the assessee in the books of M/s Vasudha Properties for the period 01.04.2012 to 31.03.2013.*
> *(vii) Copy of work done certificate*

4.2.1. As against the above, the Assessing Officer has found/observed as below:

- *(i) The assessee's address is not correct and complete*
- *(ii) Notices sent were not served and were returned.*
- *(iii) The assessee has not maintained any books of account.*
- *(iv) The assessee has not produced any vouchers in support of expenditure as well as to establish that contract work was carried on by them.*
- *(v) No agreement or details filed in respect of transaction with M/s. Capital Land Realty.*
- *(vi) The return of income was not filled in correctly. It was shown that the assessee is not liable to maintain books and get them audited. The turnover was not reflected in the return.*
- *(vii) The assessee was not assessed to tax in earlier year or thereafter.*

In view of the factual position as above, the Assessing Officer held that the assessee has not executed any work for the said parties and they have made payments to the assessee to claim bogus expenditure and total receipts were assessee as 'Income'.

4.2.2. The assessee fled Form 26AS which contains details of the payers. The payers have made payments, deducted tax, credited it in the Government account and filed TDS quarterly returns. The details of concerned Assessing Officers were available (through PAN) which were not pursued for making enquiries by the Assessing Officer. The Assessing Officer stating that the letters sent to them were returned unserved, no further enquiries were conducted.

4.2.3. On consideration of the factual position as brought out by the Assessing Officer and the documents placed on record by the assessee during the assessment proceedings, it appears that the documents filed by the assessee cannot be disregarded in toto. The finding of the AO that the payers made payments to claim bogus expenditure is without sufficient basis/enquiry. In view of the above, it is fit case for rejection of books of account/book results rather than case for treating entire receipts as income. In the facts and circumstances of the case, the books of account/book results are rejected, and it is proceeded to estimate income. The turnover of the assessee is to be taken at Rs.2,93,00,000/- which is inclusive of other credits treated as income by the Assessing Officer. The assessee being contractor, the estimate is made @ 8% on the turnover as arrived at above. This would be taken as income assessed. Except interest all other entities are taken care of in the above estimate. All the grounds raised are disposed off with above direction."

6. Before us, the ld. AR submitted that the sub-contract undertaken by the assessee were genuine by referring to certain agreements and therefore requested for confirming the addition sustained by the Ld. CIT (A). The Ld. DR on the other hand vehemently argued in support of the order of the Ld. AO and prayed for reinstating his order.

7. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee had not maintained proper books of accounts or produced his bank statements to justify the expenditure incurred by him for undertaking the contracts. The assessee has also failed to produce bills and vouchers even to establish that he was undertaking and executing civil contracts. The Ld. CIT (A) has arrived at his conclusion based on certain contract agreements, bank account etc., which are cited in his order and after perusing those documents we don't find any strength in the observation made by the Ld. CIT (A). Further on verifying the paper book of the assessee running to 32 pages, we do not find any concrete evidence to establish that the assessee is actually executing any civil contract works with respect to the contracts he has claimed to have undertaken. Further, the assessee could also not furnish proper evidence to establish that the parties from whom the assessee had received the amount of Rs. 18 lakhs is genuine. Therefore, we do not find any infirmity in the order of the Ld. AO. For the above stated

reasons, we set aside the order of the ld. CIT (A) and accordingly the order of the ld. AO is hereby reinstated.

8. In the result, appeal of the Revenue is allowed.

Pronounced in the open Court on the 19th July, 2021.

Sd/-	Sd/-
(P. MADHAVI DEVI)	(A. MOHAN ALANKAMONY)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, Dated: 19th July, 2021.
OKK
Copy to:-

1) Sri Kishore Kumar Athota, 105, Sainikpuri, Secunderabad.
2) Income Tax Officer, Ward-15(1), Room No.543, 5th Floor, D-Block, IT Towers, AC Guards, Masab Tank, Hyderabad.
3) The CIT (A)-7, Hyderabad.
4)
5) The DR, ITAT, Hyderabad
6) Guard File