



आयकर अपीलीय अधिकरण "एफ़" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य एवं

श्री अशवनी तनेजा, लेखा सदस्य के समक्ष।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

ITA No. : 5533/Mum/2014

(Assessment year: 2010-11)

Dy. Commissioner of Income Tax -7(3), Room No. 615, 6 th Floor, Aayakar Bhavan, M K Marg, Mumbai -400 020	Vs	वास्तु किर्ति एंटरप्राइसेस प्राइवेट लिमिटेड Vastu Kirti Enterprises P Ltd, Shop No. 8, Opp Sadguru Terrace, Sion Koliwada, Mumbai -400 022 PAN: AAACV 1268 J
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री ए के ढोंडीयल Shri A K Dhondial
Respondent by	:	श्री हितेश शाह Shri Hitesh Shah

सुनवाई की तारीख /Date of Hearing : 25-07-2016

घोषणा की तारीख /Date of Pronouncement : 25-07-2016

**आदेश
ORDER**

श्री अमित शुक्ला, न्या स:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the revenue against impugned order dated 26.06.2014, passed by Ld. CIT(Appeals)-13, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2010-11, on the following grounds:-

“(i) The Ld. CIT(A) has erred in law and on facts in giving relief to the assessee without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer.

(ii) The Ld. CIT(A) has failed to appreciate that because of non production of various documents, this was a fit

case for invoking Section 114(G) of Indian Evidence Act in respect of estimation of income by applying Section 44AD, which though technically not applicable, provided the reasonable basis for estimation of income in case of recalcitrant assessee s who refuses to produce documents which are expected to be in his possession.

- (iii) *The Ld. CIT(A) has erred in law and on facts in not appreciating that non-production of details was equal to its non-maintenance and, therefore, basis of estimation of income as given in Section 44AD being reasonable basis could be adopted by Assessing Officer even though Section 44AD was not applicable.*
- (iv) *The Ld. CIT(A) has erred in law and on facts in going by the letter of law that Section 44AD is not applicable because the accounts of the assessee were audited but has failed to give effect to spirit of law which is the basis for enactment of Section 44AD namely, non-availability of books of accounts/documents”*

2. The Ld. CIT(A)’s order is contrary in law and on facts and deserves to be set aside”.

2. After hearing both the parties, it is noticed that, the tax effect on the disputed issue is less than Rs.10 lakhs, which is apparent from the facts discussed herein after. From the perusal of the impugned order, it is seen that, assessee is engaged in the business of Civil Engineering and contract work. From such activities it had shown total turnover of Rs.14,26,96,823/-. The taxable income from such activities was shown at Rs.69,86,417/-, which in terms of the net profit rate comes to approximately 5%. The AO after detailed discussion in the impugned order had rejected the books of account under section 145(3) and proceeded to make best judgment assessment to determine the income of the assessee. Taking cue from section 44AD, AO adopted the net profit rate of 8% and accordingly, he estimated the addition of Rs.1,14,15,745/-, as against the income of Rs. 69,86,417/-.

3. In the first appeal, the Ld. CIT(A) confirmed the rejection of books of account by the AO, however proceeded to estimate the profit as per his observation and finding and thereby sustained the addition of Rs.32,88,740/-. Thus, if the same is added to the net profit shown by the assessee, that is, Rs. 69,86,417/-, then the aggregate amount of income from contract work exceeds Rs.1 crore, which has led to net profit rate of approx @ 7.2%, as against the income estimate by the AO at Rs.1.14 crores by adopting @ 8%. Against the said addition as confirmed by the CIT(A), assessee is not appeal as admitted by the Ld. Counsel for the assessee. Thus, the order of CIT(A) has been accepted by the assessee. Now, the disputed addition on which the revenue has filed an appeal is much less than Rs.14 lakhs and the tax effect on such disputed addition would admittedly be much less than Rs.10 lakhs.

4. Ld. DR also admitted that the tax effect on the disputed addition in the impugned appeal would be less than Rs.10 lakhs.

5. In view of the aforesaid fact that the tax effect in the impugned appeal is less than Rs.10 lakhs and in the wake of CBDT's Circular No. 21 of 2015 dated 10.12.2015, we accordingly hold that the appeal filed by the revenue is not maintainable. Further it has also been clarified by the same circular that this monetary limit will apply on pending appeals also which is evident from para 10 of the impugned Circular, which reads as under:-

"10. This instruction will apply retrospectively to pending appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed. Appeals before the Supreme Court will be

governed by the instructions on this subject, operative at the time when such appeal was filed”.

Thus, the appeal of the revenue is treated as dismissed as non-maintainable.

6. In the result, appeal of the revenue stands dismissed.

Order pronounced in the open court on 25th July, 2016.

Sd/-

(अशवनी तनेजा)

लेखा सदस्य

(ASHWANI TANEJA)

ACCOUNTANT MEMBER

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

(AMIT SHUKLA)

JUDICIAL MEMBER

Mumbai, Date: 25th July, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT -13, Mumbai.
 - 4) The CIT -7, Mumbai
 - 5) विभागीय प्रतिनिधि “एफ”, आयकर अपीलीय अधिकरण, मुंबई/
The D.R. “F” Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, मुंबई

Dy./Asstt. Registrar

I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS