

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : CHENNAI (CAMP AT MADURAI)

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1730/Mds/2014  
निर्धारण वर्ष /Assessment year : 2009-2010

Shri. B. Rajendran, **Vs.** The Income Tax Officer,  
No.9, II Cross Street, Ward I (1)  
Thirunagar, Manachanallur, Trichy  
Trichy 620 001.

आयकर अपील सं./I.T.A. No.1870/Mds/2014  
निर्धारण वर्ष /Assessment year : 2009-2010

The Income Tax Officer, **Vs.** Shri. B. Rajendran,  
Ward I (1) No.9, II Cross Street,  
Trichy Thirunagar, Manachanallur,  
Trichy 620 001.

**(अपीलार्थी/Appellant)** **[PAN AAGPR 5480B]**  
**(प्रत्यर्थी/Respondent)**

Assessee by : Shri. S. Sridhar, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Renga rajan, JCIT.

सुनवाई की तारीख/Date of Hearing : 15-02-2017  
घोषणा की तारीख /Date of Pronouncement : 05-04-2017

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

These are cross appeals filed by the Revenue and assessee respectively directed against an order dated 06.03.2014 of Id. Commissioner of Income-tax (Appeals), Tiruchirapalli.

2. These appeals are taken together for disposal. Facts apropos are that assessee engaged in the business of selling and milling paddy and rice had filed return of income for the impugned assessment year disclosing income of ₹7,37,928/-. During the course of assessment proceedings, assessee produced books of accounts but failed to support the expenditure recorded in the such books of accounts through vouchers and other supporting records. Ld. Assessing Officer found that against turnover of ₹5,02,65,138 assessee had claimed lorry freight expenditure ₹51,63,763/-. As per Id. Assessing Officer assessee had recorded lorry freight expenditure on a number of days where there were no purchases or sales. Ld. Assessing Officer also noted that lorry freight expenditure claimed came to 11.76% of the total purchases recorded by the assessee. As per the Id. Assessing Officer, assessee had purchased only 4150.698 tonns of paddy and rice. Assuming that such purchases had to be transported over an average of 200 KM, he worked out the possible lorry freight expenditure of ₹22,70,431.81. For this, he relied on letter No. BSS15700/2100, dated 10.08.2010 of Senior Regional Manager, TNCSC Trichy Region, citing all these reasons. He proposed a disallowance of freight expenditure claimed on the dates where there were no purchase or sale activity.

**3.** Ld. Assessing Officer also found that assessee had claimed labour charges at ₹57,88,443.39 working out to about 13.18% of his purchases. He was of the opinion that out of this amount, ₹32,52,210/- was claimed to have been paid on the days when there were no activity.

**4.** Looking at the Axis Bank account of assessee, Id. Assessing Officer noted that an outstanding loan of ₹1,49,69,828/- was squared off fully during the relevant previous year though funds received from one M/s. Hi-tech Agro (P) Ltd where assessee was a Director. As per Id. Assessing Officer there was a substantial increase in sundry creditors, during the relevant previous year and assessee could not substantiate such increase. Specific mention was made of a sum of ₹67,07,636/- claimed as received from one K.V. Nath. As per Id. Assessing Officer assessee had also issued cheques to various parties aggregating to ₹77,87,604/-. But these were all shown as cash withdrawals in its cash book. This as per the Id. Assessing Officer resulted in a cash deficiency of the like amount.

**5.** Reply of the assessee for above was that it had to move the rice and paddy twice, one from its procurement centre to centralized storing place and another from the centralized storing place to Manachanallur. In so far as labour charges are concerned, assessee

stated that it was not owning any rice mills and it was holding the paddy in private rice mills, and this entailed additional expenditure for loading and unloading. In so far as loan from Axis bank was concerned, assessee stated that this was paid out of cheques received from M/s.Hi Tech Agro Foods Ltd, in settlement of the dues from them. Assessee also submitted address and PAN no of M/s. Hi Tech Agro Foods Ltd. In so far as credit from K.V. Nath are concerned, assessee stated that two of such amounts were directly credited to the bank account and not shown as cash receipts. In so far as cheques issued to various parties were concerned, reply of the assessee was that all these persons were his staff and effectively reflected cash withdrawals. Alongwith above reply, assessee also gave ratio of its turnover, purchase and expenditure of earlier three years and subsequent two years.

**6.** However, Id. Assessing Officer was not impressed. According to him, lorry freight charges claimed by the assessee came to 5.63% of his purchase which was much higher than the industrial average of 0.65%. He made a comparison with three other assessees who were engaged in same business for arriving the average rates. As per Id. Assessing Officer claim of lorry freight expenditure made by the assessee was 8.66 times of the industrial average. Coming to the labour charges, Id. Assessing Officer noted that industrial average was

only 0.30% of the purchases and therefore assessee's claim of 1.81% was highly excessive. As for squaring off of the loan from Axis bank, Id. Assessing Officer noted that payments were effected from funds coming through increase in sundry creditors. According to him, sundry creditors as on 31.03.2008 had gone up to ₹1,90,76,801/- against an opening balance of ₹26,21,532/-. Id. Assessing Officer concluded that there was unexplained increase of sundry creditors to the extent of ₹1,54,53,021/-. Id. Assessing Officer also did not accept the explanation of the assessee for credit from K.V. Nath. He held that the sum of ₹67,07,032/- claimed to have been received from K.V. Nath through RTGS was incorrect. According to him, sums aggregating to ₹11,75,075/- were cash credits. As for the claim of the assessee that cheques issued in the name of its employees were only cash withdrawals, Id. Assessing Officer was of the opinion that assessee could not substantiate this. He was of the opinion that following addition/disallowance were required.

Sl.No	Description	Amount (₹)
1	Lorry freight disallowed	26,92,230
2	Labour charges disallowed	32,52,210
3	Sundry creditors unexplained	1,54,53,022
4	Credit from K.V. Nath added	67,07,636
5	Unexplained cash credits	77,87,604
	<b>Total</b>	<b>3,58,92,702</b>

However, as per Id. Assessing Officer, in order to ensure natural justice, it was necessary to net the cash inflow with cash outflows. After such telescoping a net addition of ₹2,16,16,397/- was made.

7. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Contention of the assessee was that additions were made merely on surmises and presumptions. In so far as lorry freight charges are concerned, argument of the assessee was that the nature of its trade was not considered by the Id. Assessing Officer. According to him, it was incorrectly presumed that transportation charges and freight expenses would be incurred only on dates where there were purchase and sales of paddy and rice. Further, according to assessee, Id. Assessing Officer had also not considered involvement of substantial labour in the trade, where it was necessary to load, unload and unpack a number of times, due to storing, drying and treatment for pest control. In so far as increase in sundry creditors was concerned, submissions of the assessee was that such sundry creditors were represented by stock ₹1,56,47,575/-. Id. Assessing Officer had taken a wrong presumption that squaring up of loan with Axis bank was through increase in sundry creditors. Further, as per assessee, drawings from the bank account in different names, were only cash withdrawals and so done to reduce the banking

transaction tax. For the loan from K.V. Nath, submission of the assessee was that it had given complete address and PAN which were not considered by the Id. Assessing Officer. Finally assessee stated that additions made by the Id. Assessing Officer when considered in the aggregate came to 44.47% of the turnover and in the trade of paddy and rice such huge profits were not possible.

**8.** Ld. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee was of the opinion that Id. Assessing Officer having invoked Sec. 144 of the Act could not have proceeded from the profits declared by the assessee in its profit and loss account, and made disallowance and additions. According to him, Id. Assessing Officer should have rejected the books of accounts and proceeded to complete the assessment under the best of judgment method. Further, as per Id. Commissioner of Income Tax (Appeals) loan from Axis bank was paid by the assessee through collection of debts due to it from M/s. Hi-tech Agro (P) Ltd. Ld. CIT(A) also noted that assessee had filed a letter of confirmation of K.V. Nath with all necessary details and the Id. Assessing Officer had not found anything wrong with such details furnished. Relying on the decision of Jodhpur Bench of the Tribunal in the case of *ITO vs. Chohtan Construction Co.* 84 TTJ 693, Id. Commissioner of Income Tax (Appeals) held that additions resulting in erroneous net profits not

fitting to the type of business carried on by an assessee could not be sustained. According to Id. Commissioner of Income Tax (Appeals), additions were all made on wild estimates. He was of the opinion that for all the discrepancies pointed out, a 5% profit estimate on the turnover of ₹5,33,27,788/- would suffice. He therefore, fixed the income of the assessee as ₹26,66,389/- and deleted the balance additions.

**9.** Now before Revenue is aggrieved on substitution of disallowance/ addition made by the Id. Assessing Officer, with a 5% estimated profit, whereas assessee in its appeal says that even the 5% estimate of profit on turnover was on the higher side.

**10.** Ld. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that Id. Assessing Officer had made addition for lorry freight charges and labour charges considering industrial average in this type of business. As per Id. Departmental Representative such industrial average for lorry freight was 5.63% of the purchases and labour charges was 0.30% of the purchases. As against this, assessee as per Id. Departmental Representative had claimed 8.86 times and 6.03 times of the industrial average under these heads. In so far as additions made for sundry creditors were concerned, Id. Departmental

Representative submitted that assessee could not produce any of the sundry creditors for examination. Further as per Id. Departmental Representative credit worthiness of K.V. Nath was never substantiated by the assessee. Continuing in the same vein, Id. Departmental Representative argued that assessee had shown cash withdrawals on cheques issued to eighteen persons but could not prove that these eighteen persons were employees of the assessee. Thus, as per Id. Departmental Representative Id. Commissioner of Income Tax (Appeals) fell in error in brushing aside all these hard evidence and estimating the income of the assessee at 5% of its turnover.

**11.** Contra, Id. Authorised Representative submitted that estimate made by the Id. Commissioner of Income Tax (Appeals) at 5% itself was on the higher side. As per Id. Authorised Representative assessee had net profit of only 1.35% to 0.75% over various financial years ending 31.03.2005, 31.03.2006, 31.03.2007, 31.3.2008, and 31.03.2010. While supporting the order of the Id. Commissioner of Income Tax (Appeals) so far as it related to rejection of the methodology adopted by the Id. Assessing Officer, Id. Authorised Representative submitted that estimate made at 5% of the turnover was required to be brought down atleast to 2%.

**12.** We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that Id. Assessing Officer had invoked Sec. 144 of the Act while completing assessment. While making a best judgment it is essential for the Id. Assessing Officer to take into account all relevant material which are gathered. It is an admitted position that assessee had produced books of accounts but could not support it with evidence for expenditure. However, for the squaring up of loan taken up from Axis Bank assessee could show that these were out of funds received from M/s. Hi-tech Agro (P) Ltd, for settlement of their dues. It also not disputed that assessee had filed confirmation letter for the loan raised by him from K.V. Nath and such confirmation letter contained address and PAN of the K.V. Nath. No doubt Id. Assessing Officer had culled out the data with regard to three others traders in similar line of business for coming to a conclusion that lorry freight charges and labour charges claimed by the assessee were 8.66 times and 6.03 of the industrial average. In our opinion, all this would only demonstrate the unreliability of the books of accounts of the assessee. Id. Assessing Officer had never doubted turnover of the assessee. He had proceeded with a method of pick and choose, whereby substantial portion of freight charges and labour charges were disallowed. The presumption while making such disallowance was that such expenditure would not have been incurred

on the dates where there were no purchase or sale of paddy/rice. This in our opinion was purely a surmise. Ld. Assessing Officer had proceeded to make disallowances from the books of accounts though assessee had not produced any evidence in support of any expenditure claimed. Thus, the disallowances were purely estimates. When an assessment is completed on the basis of estimate it is required that thus such estimate is not a wild one but one which has a reasonable nexus with the available materials and circumstances. The estimate should be a bonafide one and based on a rational thinking. There can be a degree of guess work but guess work cannot throw up results where 44.4% of the turnover of the assessee was considered for addition. In such circumstances, we cannot find fault with the direction of Id. Commissioner of Income Tax (Appeals) to estimate the net income of the assessee at 5% of its turnover. As for the contention of the Id. Authorised Representative that assessee had net profit rate of only 1.35% to 0.75% over a number of years, we are of the opinion that considering the discrepancies and the failure of the assessee to support the books of accounts with proper evidences, the estimate of 5% made by the Id. Commissioner of Income Tax (Appeals) was a fair one. We do not find any reason to interfere with

the order of the Id. Commissioner of Income Tax (Appeals).

**13.** In the result, the appeal of the Revenue as well as cross objection of the assessee are dismissed.

Order pronounced on Wednesday, the 5th day of April, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 5<sup>th</sup> April, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |