

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos. 3300 to 3303/Mds/2016  
निर्धारण वर्ष / Assessment Years : 2005-06 to 2008-09

Shri V. Mani,  
C/o M/s. Subbaraya Aiyar  
Padmanabhan & Ramamani Advocates,  
New No.75 (Old No.150),  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai – 4.

v. The Income Tax Officer,  
Ward-2,  
Villupuram.

PAN : AAIPM6184D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Vijayaraghavan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri Sanat Kumar Raha, JCIT

सुनवाई की तारीख/Date of Hearing : 24.01.2017

घोषणा की तारीख/Date of Pronouncement : 28.02.2017

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the order passed by the Commissioner of Income Tax (Appeals)-Puducherry dated 21.09.2016 and pertains to the assessment years 2005-06 to 2008-09. Since common issue arises for consideration in all the appeals, the same was heard together and disposed off by this common order.

2. The common issue arises for consideration in all the appeals is with regard to disallowance of expenditure.

3. Shri Vijayaraghavan, the Ld. counsel for the assessee submitted that there was a survey in the premises of the assessee. The Assessing Officer disallowed 12% of the expenditure claimed by the assessee on the ground that the bills are self-made and the assessee might have inflated the expenditure. The Assessing Officer has also referred to the statement said to be recorded from the assessee during the survey operation. According to the Ld. counsel, the statement recorded from the assessee during the course of survey operation has no evidentiary value. According to the Ld. counsel, the disallowance made by the Assessing Officer at the rate of 12% is highly excessive.

4. On the contrary, Shri Samat Kumar Raha, the Ld. Departmental Representative submitted that the assessee has not produced proper bills and vouchers for the expenditure claimed. The bills and vouchers are self-made. When this was brought to the notice of the assessee, he accepted for disallowance of 12% during the course of survey operation. Therefore, the CIT(Appeals) found

that it is not the case of disallowance made based on statement recorded during the course of survey operation. The Assessing Officer has also taken into consideration the corroborative material available on record. Therefore, the disallowance made by the Assessing Officer has rightly been sustained by the CIT (Appeals).

5. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the assessee engaged in the business of purchase and sale of paddy and rice. The expenses towards EB, Gunny bags were claimed by the assessee. The Assessing Officer found that the bills and vouchers produced by the assessee did not tally with the expenses claimed. Therefore, the expenses were inflated. The Assessing Officer also found that the bills and vouchers are self-made. Therefore, the Assessing Officer disallowed 12% of the expenditure claimed on the basis of statement recorded during the course of survey operation. This Tribunal is of the considered opinion that in this nature of business, the purchase of paddy from other state and the expenditure incurred by the assessee has to be supported only by self-made vouchers. Purchase of paddy from agriculturists cannot be supported by any other evidence other than self-made vouchers.

In case, the paddy are purchased from regular dealer, then the assessee may have some proper voucher. It is nobody case that the paddy was purchased from dealer. Moreover, the purchase of gunny bags and other packing materials are purchased in the unregulated market. Therefore, this Tribunal is of the considered opinion that the assessee cannot maintain any proper voucher in this kind of business. Taking into consideration of the nature of the activity, this Tribunal is of the considered opinion that disallowance at the rate of 12% is highly excessive. By taking into consideration of the nature of business and the expenses claimed, the purchases made by the assessee, this Tribunal is of the considered opinion that disallowance of 5% of the expenses claimed would meet the ends of justice. Accordingly, the orders of the lower authorities are modified and the Assessing Officer is directed to disallow only 5% of the total expenses claimed instead of 12%.

6. For the assessment year 2008-09, the assessee has taken one more ground regarding the cost of construction. According to Shri Vijayaraghavan, the Ld. counsel for the assessee, the Assessing Officer in fact referred the matter to the valuation officer. The valuation officer estimated the cost of construction on the basis

of the Central Public Works rate. According to the Ld. counsel, the State PWD rate would be accurate than the Central PWD rate.

7. On the contrary, Shri Sanat Kumar Raha, the Ld. Departmental Representative submitted that even though, the valuation officer estimated the cost of construction on the basis of the CPWD rate, the CIT (Appeals) has given deduction after referring to the judgment of the Madras High Court. Therefore no interference is called for.

8. We have considered the rival submissions on either side and perused the material available on record. The State Government has prescribed rate for construction. Similarly, the Central Government has also prescribed rate for construction. The valuation officer has adopted the Central PWD rate for the purpose of estimation. The CIT (Appeals) after referring to the judgment of the Madras High Court in the case of A. Abdul Rahim v Income Tax Officer [2002] 125 Taxman 33 MAD, has allowed reduction towards cost of construction. When there are two different rates prescribed by the Central Government and State Government, this Tribunal is of the considered opinion that rates prescribed by the State

Government would be more accurate in the states in which the construction were made. Moreover, when the estimates are made, it is always preferable to follow the rate prescribed by the State Government in the respective State. Therefore, this Tribunal is of the considered opinion that the rate prescribed by the State Government has to be adopted for the purpose of estimating the cost of construction. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to value the cost of construction as per the rates prescribed by the State PWD.

10. In the result all the appeals of the assessee are partly allowed.

Order pronounced on 28<sup>th</sup> February, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 28<sup>th</sup> February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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