

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.708/Mds/2017

निर्धारण वर्ष /Assessment Year: 2006-07

Smt. K.Tamilselvi,
56/19, 3rd Floor,
Nyniappa Maistry Street,
Pudupakkam, Royapettai,
Chennai-600 014.
[PAN: ABJPT 6612 M]

Vs. The Dy. Commissioner,
Circle-I, 44, William's Road,
Trichirapalli-620 001.

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Ms.K.Tamilselvi

प्रत्यर्थी की ओर से /Respondent by

: Mr.Sasikumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.06.2017

घोषणा की तारीख /Date of Pronouncement

: 15.06.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.708/Mds/2017 is an appeal filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-1, Tiruchirapalli, in ITA No.60/2009-10/CIT(A)-1/Try. dated 31.01.2017 for the AY 2006-07.

2. Shri Sasikumar, JCIT, represented on behalf of the Revenue and the assessee represented in-person.

3. It was submitted by the Assessee that the assessee plied five lorries during the previous year and the said lorries were exclusively used for transportation of two wheelers. The assessee had applied the provisions of Sec.44AE and had filed her return of income on 27.10.2006. The return of income filed by the assessee was processed u/s.143(1) on 24.03.2008. The returned income of the assessee was accepted. Subsequently, notice u/s.271A was issued on 28.01.2009 on the assessee in respect of the non-maintenance of books of accounts. The assessee had submitted that she owned five lorries and was engaged in the business of hiring them. The assessee had submitted that the assessee had filed her return applying the provisions of Sec.44AE of the Act. However, as the assessee had calculated her total gross receipts at Rs.39,83,376/- and Rs.33,45,706/- as expenditure, on the ground that no books were maintained, the AO levied penalty u/s.271A. On a specific query, it was submitted by the assessee that the assessee had admitted an income of Rs.10,17,670/- by applying the provisions of Sec.44AE. On appeal, Ld.CIT(A) had confirmed the levy of penalty. It was a submission that the Order of the Ld.CIT(A) be reversed.

4. In reply, the Ld.DR vehemently supported the Order of the AO and the Ld.CIT(A).

5. We have considered the rival submissions. Admittedly, the assessee has returned an income of Rs.10,17,670/- as income from plying of five

lorries. The returned income of the assessee has been accepted so far as the return was processed u/s.143(1) on 24.03.2008. The assessee admittedly has given the details, her total receipts and expenditure. If the total receipts and expenditure are considered, the assessee's net profit would be around Rs.6,37,600/- but the assessee has offered higher income by applying the provisions of Sec.44AE. Just because the assessee has not mentioned Sec.44AE in her return and has given the details of her total receipts and expenditure, it does not make the return of income filed by her to be not u/s.44AE. She would obviously have to give the details of her total receipts to claim the benefit of the TDS. Therefore, it cannot be said that the assessee has filed her return by not applying the provisions of Sec.44AE. The fact that the provisions of Sec.44AE is made available to the assessee's who are plying 10 lorries or less than 10 lorries shows that the legislature was well-aware of such small assessee's, finding it difficult to maintain the necessary staff. In any case, shorn of all the frills, it is clear that the assessee has filed her return of income by declaring her income by applying the provisions of Sec.44AE and this is not disputed by the Revenue. Once the assessee is filing her return of income and disclosing her income on the basis of Sec.44AE, it is not mandatory on the assessee to maintain her books of accounts. This being so, we are of the view that no penalty u/s.271A is leviable in the hands of the assessee. Consequently, the penalty as levied by the AO and as confirmed by the Ld.CIT(A) stands deleted.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on June 15, 2017, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 15 , 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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