

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2115/Mds/2015
निर्धारण वर्ष /Assessment Year: 2011-12

The Asst. Commissioner of Income
Tax, Central Circle 2(4), Chennai-
600 034.

Vs. Mr. Kannan Dhanasekar, 66,
Rajendra Prasad Road,
Krishna Nagar, Chrompet,
Chennai-600 044.

[PAN: AEBPD 2267D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Sasikumar, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.T. Vasudevan, Adv.

सुनवाई की तारीख/Date of Hearing

: 17.04.2017

घोषणा की तारीख /Date of Pronouncement

: 08.06.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated
31.08.2015 of Commissioner of Income Tax (Appeals)-10, Chennai, in ITA
No.22/CIT(A)-10/2014-15 for the AY 2011-12.

2.0 All the grounds of the appeal are related to the estimation of income @8% on total turnover of Rs.19,87,28,538/-. The assessee is engaged in the business of civil Engineering, Execution of Railway works contracts and transport contracts and filed the return of income declaring total income of Rs.77,77,320/- on 30.09.2011. For the AY 2001-12, the total turnover of the assessee was Rs.19,87,28,538/-. In the scrutiny proceedings, the AO issued the notices and called for the various details but the assessee failed to furnish the same. Hence the AO has issued the show cause notice calling for assessee's objections to estimate the income @8% of gross receipts and there was no response from the assessee. Therefore, the AO completed the assessment estimating the income @8% on gross receipts. The AO has separately assessed the income from other sources and the property income and accordingly computed the gross total at Rs.1,78,66,794/-.

3.0 Against the order of the AO, the assessee filed appeal before the Ld.CIT(A). During the appeal, proceedings the assessee brought to the notice of the Ld.CIT(A) that a survey u/s.133A was conducted in the business premises of the assessee and during the course of survey, the assessee has admitted the additional income of Rs.21.53 crores for the A.Ys 2008-09 to 2014-15 including the relevant Assessment Year 2011-12. For the A.Y. under consideration the assessee had admitted the additional income of Rs.4,32,31,500/-. The Ld.CIT(A) had considered the submissions of the assessee and convinced that the additional income

admitted by the assessee was much more than the income estimated by the AO and hence no further addition is warranted and accordingly deleted the addition and allowed the assessee's appeal.

4.0 Aggrieved by the Order of the Ld.CIT(A)'s, the Department is in appeal before us.

The Ld.DR argued that the AO has called for the details which were not furnished by the assessee. Since the assessee is not complying with the notice issued u/s.143(2) and did not furnish the details as called for by the AO there is no alternative to the AO except to complete the assessment on the basis of information available on record. Accordingly, the AO has completed the assessment estimating the income @8% on gross receipts which is in order. Further, the Ld.DR argued that the admission of additional income on account of survey carried out by the Investigation Wing was not made available to the AO at the time of scrutiny assessment. Hence, the case should go back to the file of the AO to verify whether the additional income offered by the assessee is sufficient to meet the deficiencies noticed by the AO as well as by the Investigation Wing at the time of survey.

5.0 On the other hand, the Ld.AR argued that the assessee is maintaining the regular books of accounts which were Audited u/s.44AB of IT Act and the AO has estimated the income without rejecting the books of

accounts. Since the regular books of accounts are maintained if the AO chose to resort to estimation of income, the AO must reject the books of accounts and proceed to estimate the income. Further, the Ld.AR submitted that there was a survey u/s.133A of IT Act in the business premises of the assessee on 27.02.2014 and the assessee has admitted the additional income of Rs.21.53 Cr. for the AYs 2008-09 to 2014-15. For the relevant AY i.e. 2011-12, the assessee has admitted additional income of Rs.4.23 Cr. and the telescopic benefit should be allowed to the assessee in the interest of justice since additional income admitted includes the Assessment Year 2011-12 also.

6.0 We heard the rival submissions and perused the material placed on record.

The assessee is maintaining regular books of accounts and books of accounts are duly audited by the qualified accounting u/s.44AB of IT Act. The AO has estimated the income since the assessee has not maintained the day to day stock register and did not furnish the details called for. But the AO resorted to estimation of income without rejecting the books of accounts which is not in Order according to the Ld.AR. Further, the assessee has admitted additional income of Rs.21.53 Cr. during the survey u/s.133A related to the AYs 2008-09 to 2014-15. For the AY 2011-12, the additional income offered by the assessee was Rs.4.32 Cr. The details of defects found at the time of survey and reasons for

admission of additional income of Rs.21.53 crores for different years and Rs.4.32 crores for the assessment year under consideration was not placed before us. The sufficiency of additional income has to be considered with the evidences found at the time of survey and the defects in the books of accounts. The assessee has not furnished the details and did not produce the books of accounts. The question of rejection of books of accounts would arise only if the assessee produces the books of accounts. When the assessee does not produce books of accounts such question does not arise. However in this case at the time of scrutiny assessment the assessee has not complied with the notices issued and has not furnished the information called for. Subsequently, a survey u/s.133A was conducted and the assessee admitted additional income of Rs.4.32 crore and the AO completed the scrutiny assessment on estimation and information collected during the survey was not available to the AO. Now the issue is whether the additional income declared by the assessee is true and correct and would meet the deficiencies as per the evidences found or not? For this purpose the information available at the time of survey needs to be verified with the books of accounts and assessment records. Therefore we are of the considered opinion that the case should be remitted back to the file of the AO to examine the material found at the time of survey and to assess the true and correct income as per the evidences. Accordingly, we set aside the orders of the lower authorities and remit the matter back to the file of the AO to redo the assessment de nova.

7.0 In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on June 08, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: June 08, 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