

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य, न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

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

आयकरअपीलसं./I.T.A.No. 139/Mds/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Nagam Pvt. Ltd., New No.3, Old No.19, 2 nd Main Road, Kottur Garden, Chennai – 600 085.	Vs	The Income Tax Officer, Corporate Ward – 4 (2), Chennai.
PAN:AABCN2651G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri AR.V. Sreenivasan, JCIT

सुनवाईकीतारीख/Date of hearing	:	23.10.2017
घोषणाकीतारीख /Date of Pronouncement	:	27.10.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-8, Chennai dated 23.11.2016 in ITA No.204/2015-16 for the assessment year 2012-13 passed U/s.250(6) r.w.s. 144 of the Act.

2. The assessee has raised several grounds in its appeal, however the crux of the issue is that the Ld.CIT(A) has erred in

sustaining the order of the Ld.AO who had assessed the income of the assessee at 1% gross sales.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of trading in cements, filed its return of income for the assessment year 2012-13 on 04.12.2013 admitting total income of Rs.6,14,489/-. The case was selected for scrutiny and finally assessment order was passed U/s.144 of the Act on 24.03.2015, wherein the Ld.AO estimated the income of the assessee at 1% of its turnover amounting to Rs.6,06,53,917/-, which works out to Rs.60,06,539/- because the assessee did not produce its books of accounts, bills & vouchers and other relevant documents during the assessment proceedings. On appeal, the Ld.CIT(A) confirmed the order of the Ld.AO by observing as under:-

“4.1 I have considered the observation of the Assessing Officer and the submissions made by the appellant. The only issue under consideration is the estimation of income made at 1% of the gross sales by the Assessing Officer in an assessment made u/s.144. Admittedly, the net profit margin of the appellant in the preceding four years has been as under:

<i>Financial Year Ending</i>	<i>Net Profit Percentage</i>
<i>31.03.2008</i>	<i>0.66</i>
<i>31.03.2009</i>	<i>0.64</i>
<i>31.03.2010</i>	<i>0.51</i>
<i>31.03.2011</i>	<i>0.46</i>

The average net profit shown by the appellant is 0.57% for the preceding four assessment years. It is seen that the appellant neither filed the information called for by the Assessing Officer nor responded to the query of the Assessing Officer asking the appellant to explain the reasons as to why the 1% of the gross sales should not be considered as the net profit for the assessment year under consideration. There is a specific finding by the Assessing Officer with regard to non-furnishing of information and non-compliance of the notices & letters issued. As observed in the case of A.R.A.N. Chettiyar Firm v. ITO (2 ITC 477)(Rangoon), where the assessee furnished only approximate figures in the return of income then a best judgement made by ignoring that return was valid. In the case of the appellant, the net profit was arrived on estimate basis, as clearly observed by the Assessing Officer. The appellant's contention that while making a best judgement assessment comparable cases have to be considered is not relevant in the case on hand since the Assessing Officer essentially relied on the net profit admitted by the appellant in the preceding assessment years. The estimation of 1% has been made by the Assessing Officer keeping in view the fact that the appellant received a discount amount of Rs.1.38 crores in the previous year relevant to the assessment year under consideration. Therefore, I find that the Assessing Officer made an honest and fair estimate of the profits and the estimation calls for no interference whatsoever. In view of the above, the estimation of income of the appellant at 1% of the gross sales is confirmation. The appellant fails on this ground.

4. At the outset, we find merit in the order of the Ld.CIT(A), because in the absence of books of accounts and other relevant documents, the Revenue do not have any other option but to estimate the income of the assessee based on its turnover. In the case of the assessee, the Ld.Revenue Authorities were magnanimous and liberal in estimating the income of the

assessee at 1% of its turnover. However, since the Ld.AR has pleaded stating that the matter may be remitted back to the file of Ld.AO for fresh consideration because the assessee is in a position to produce its books of accounts and all relevant documents, in the interest of justice, we hereby remit the matter back to the file of Ld.AO for de-nova consideration. However, we also caution the assessee to promptly co-operate before the Revenue Authorities by producing the relevant documents required for the assessment proceedings, failing which the Ld.Revenue Authorities shall be at liberty to pass appropriate order in accordance with law & merits based on the materials placed before them.

5. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 27th October, 2017 at Chennai.

Sd/-
(जॉर्ज माथन)
(George Mathan)
न्यायिक सदस्य/Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th October, 2017

RSR

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