

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2154/Mds/2016

निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer,  
Ward – 2(2),  
Tirupur.

v. Shri N. Easwaran,  
No.400/1A, Chettipalayam Road,  
Ganapathy Nagar, Palladam,  
Tirupur – 641 664.

(अपीलार्थी/Appellant)

PAN : AAGPE 4276 L

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri AR.V. Sreenivasan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri T.N. Seetharaman, Advocate

सुनवाई की तारीख/Date of Hearing : 12.12.2017

घोषणा की तारीख/Date of Pronouncement : 28.12.2017

### **आदेश / O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -3, Coimbatore, dated 29.04.2016 and pertains to assessment year 2013-14.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that there was a survey in the premises

of the assessee. During the course of survey operation, it was found that the assessee was doing business outside the books of account. According to the Ld. D.R., in fact, the assessee admitted that the turnover of unaccounted transaction was ₹3,76,40,205/-. Subsequently, the assessee retracted the admission made during the course of survey operation. The Ld. D.R. further submitted that in fact, the assessee deposited ₹ 3,76,40,205/- in the bank account. While calling upon the assessee to explain the source for such deposit, it was admitted that this was the turnover out of the transaction made by the assessee outside the books. Therefore, the Assessing Officer made an addition of ₹3,76,40,025/-. On appeal by the assessee, according to the Ld. D.R., the CIT(Appeals) restricted the income at 2.50% of the turnover as against 2.35% offered by the assessee. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the gross profit of the assessee was 5.37% in the earlier year and this Tribunal for the assessment year 2012-13, estimated the profit at 4.67%. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in restricting the income at 2.50% of the turnover.

3. On the contrary, Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that admittedly the assessee could not disclose the transaction made by five concerns of the assessee to the income-tax authorities. According to the Ld. counsel, the assessee is manufacturing cotton cloth for grey area. The Revenue authorities found deposit of ₹3,76,40,025/-. According to the Ld. counsel, only the income component deposited in the bank can be taken as income. The CIT(Appeals) after considering the expenditure incurred by the assessee found that 2.50% of the turnover has to be considered as income of the assessee. Therefore, according to the Ld. counsel, there is no error in the order of this Tribunal.

4. We have considered the rival submissions on either side and perused the relevant material available on record. For the assessment year 2012-13, same issue came before this Tribunal in I.T.A. No.2117/Mds/2016. This Tribunal vide its order dated 26.10.2016 has found at para 12 of its order as follows:-

*“12. In the case of the assessee, it is an admitted fact that the assessee made unaccounted turnover of ₹17.66 crores. The assessee did not furnish any evidence before us in the form of purchase and sale vouchers. In the absence of complete details of purchases and sales the entire*

*credits in the bank account required to be brought to tax as per Section 69 of the Act. However, the assessee admitted it as unaccounted turnover and profit of ₹82,48,989/- on unaccounted turnover of ₹17,66,37,879/- @ 4.67% as income which was accepted by the department. The Id. A.R. did not furnish any evidence to prove that the profit is less than the amount admitted by the assessee with the details of purchases and other related expenditure vouchers. As per the assessee own admission the gross profit on accounted turnover was 5.37% of sales for the year under consideration in the regular turnover and the assessee could furnish any evidence to show that some amount of expenditure relating to unaccounted turnover was remained for consideration. In the absence of any evidence it is logically inferred that the entire expenses relating to both accounted and unaccounted turnover was booked and nothing remained for consideration. Against the gross profit of 5.37% the assessee admitted the net profit @4.67% which means while admitting, the assessee has considered the entire unaccounted expenditure also. Such a fraction of percentage of income cannot be admitted by any ordinary business man unless he is so confident of the profit he earned. The assessee is an experienced business man both in accounted and unaccounted business and admitted the net profit 4.67% against the gross profit of 5.37% on regular sales and taken due credit for the expenses also from the gross profit. No evidence is brought on record to show that the profit is less than 4.67% by the assessee. Therefore, we are unable to accept the contention of the Id. AR that the profit was less than 4.67% and accordingly we set aside the order of the CIT(A) and sustain the addition made by the Assessing Officer.”*

5. Subsequently, the assessee filed Miscellaneous Petition in M.P. No.339/Mds/2016. The Miscellaneous Petition was dismissed on the ground that the Assessing Officer considered the deposit made in the bank account and not the statement made during the

course of survey operation. The turnover of the assessee admittedly was ₹71,01,51,520/-. The assessee agreed before the authorities that on the basis of deposit made in the bank account, the income was ₹3,76,40,025/- for six assessment years. The turnover for the year under consideration, i.e. 2013-14 was ₹27,23,40,075/-. The Assessing Officer adopted 5.97% as income. This Tribunal is of the considered opinion that for the assessment year 2012-13, the income was taken at 4.67% on the turnover, therefore, for the assessment year 2013-14, the same rate has to be adopted in the absence of any other material. Accordingly, the orders of both the authorities below are modified. The Assessing Officer is directed to adopt 4.67% of the turnover, i.e. ₹27,23,40,075/- as income for the year under consideration.

6. In the result, the appeal filed by the Revenue is partly allowed.

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

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> December, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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