

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.Nos.1595 & 1596/Mds/2017
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)

The Assistant Commissioner of Income Tax, Virudhunagar Circle, Virudhunagar.	Vs	Shri N. Narayanasamy, Prop. Banu Hotel, No.134, Madurai Road, Virudhunagar
		PAN: ACJPN6473B
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

C.O. Nos. 120 & 121/Mds/2017
(in I.T.A. Nos.1595 & 1596/Mds/2017)

Shri N. Narayanasamy, Prop. Banu Hotel, No.134, Madurai Road, Virudhunagar	Vs	The Assistant Commissioner of Income Tax, Virudhunagar Circle, Virudhunagar.
PAN: ACJPN6473B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by	:	Smt. S. Vijayaprabha, JCIT
निर्धारिती की ओर से /Assessee by	:	Shri M. Kumaraswamy, ITP

सुनवाईकीतारीख/Date of hearing	:	15.11.2017
घोषणाकीतारीख /Date of Pronouncement	:	28.12.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the Revenue are directed against the orders passed by the learned Commissioner of Income Tax (Appeals)-3, Madurai dated 24.03.2017 & 27.03.2017 in ITA

Nos.0086/2016-17 & 0087/2016-17 for the assessment years 2012-13 & 2013-14 passed U/s.250(6) r.w.s. 143(3) & 147 of the Act. The assessee has also raised cross objections towards the relevant orders of the Ld.CIT(A) supra.

2. The Revenue has raised identical grounds in both its appeals however the cruxes of the issues are that:-

- (i) The Ld.CIT(A) has erred in estimating the turnover of the assessee at Rs.2 crores and Rs.2.2 crores for the assessment year 2012-13 & 2013-14 respectively without any basis.
- (ii) The Ld.CIT(A) has erred in directing the Ld.AO to adopt Net profit @8% on turnover.

3. The assessee has raised several identical grounds in his cross objections which are in support as well as against the orders of the Ld.CIT(A).

4. The brief facts of the case are that the assessee is an individual engaged in hotel business. A survey U/s.133A of the Act was conducted in the business premises of the assessee on

04.02.2015. Till the date of survey the assessee had not filed his return of income for the assessment year 2012-13 as well as for the assessment year 2013-14. During the course of survey, it was found that the assessee had invested in certain immovable properties, fixed deposits, paid money for purchase of flat for his son at Chennai during the month of January, 2014 and September, 2014. It was further observed that the assessee has incurred expenditure of Rs.44,93,000/- for his son's marriage during the month of September, 2014. There were also certain cash deposits in City Union Bank. Therefore, a notice was served u/s.148 of the Act requiring the assessee to furnish his return of income. In response, the assessee filed his return of income for the assessment year 2012-13 & 2013-14 on 31.03.2015 admitting his total income as Rs.3,93,760/- & Rs.5,98,230/- respectively. However, the assessee did not furnish his statement of income, balance sheet and profit & loss account along with the return of income. Thereafter, the Ld.A.O made additions in the hands of the assessee for the assessment year 2012-13 under the head unexplained investment towards immovable property u/s.69 of the Act, income from other sources, unexplained investments by way of cash deposits in

savings bank account u/s.69 of the Act and income from business Rs.53,12,830/-. Similarly, additions were made for the assessment year 2013-14 under the head unexplained investment in immovable properties u/s.69 of the Act, unexplained investment by way of cash deposits in savings bank account u/s.69 of the Act and income from business of Rs.50,73,996/-.

5. During the course of survey proceedings, it was revealed that the assessee had disclosed sales before the Commercial Tax Officer, Virudhnagar, as Rs.36,89,465/- for the assessment year 2012-13 and Rs.35,23,609/- for the assessment year 2013-14. However, from the materials examined during the course of survey with respect to the Restaurant owned by the assessee in Virudhnagar, Collectorate, Kallikubi & RR Nagar, it was revealed that the assessee had suppressed the sale to the extent of eight times. Therefore, multiplying the turnover disclosed before the Commercial Tax Officer by eight, the total turnover of the assessee for the assessment year 2012-13 & 2013-14 was determined at Rs.2,95,15,720/- & Rs.2,81,88,872/- respectively. Thereafter, the Ld.AO estimated the net profit of the assessee

@18% of the turnover and worked out the same at Rs.53,12,830/- & Rs.15,73,997/- for the assessment year 2012-13 & 2013-14 respectively. On appeal, the Ld.CIT estimated the turnover of the assessee for the assessment year 2012-13 at Rs.2.00 Crs based on his findings that the turnover per day works out to Rs.75,180/- which was further based on the materials found during the course of survey for the assessment year 2015-16 wherein the turnover was computed at Rs.2.60 Crs. Thereafter by estimating 10% increase in turnover, the turnover for the subsequent assessment year 2013-14 was worked out at Rs.2.20 Crs. Subsequently, the Ld.CIT estimated the income of the assessee at 8% of the turnover as against 18% worked out by the Ld.AO. Aggrieved by the order of the Ld.CIT the revenue is in appeal before us.

6. The Ld.DR submitted before us that the Ld.AO had fairly estimated the income earned by the assessee with respect to his Restaurant business which did not require any interference by the Ld.CIT(A). He further submitted that the assessee has grossly erred in not maintaining his books of accounts and therefore the Ld.AO did not have any other alternative but to

estimate the income of the assessee. It was further submitted that the Ld.AO had estimated the turnover of the assessee based on the materials available before him during the course of survey and the Ld.CIT had erred in reducing the turnover worked out by the Ld.AO. The Ld.DR further vehemently argued stating that in Restaurant business the margin is quite high and the Ld.AO had magnanimously estimated the net profit at 18% on the turnover which was unduly reduced by the Ld.CIT to 8%. It was therefore pleased the order of the Ld.AO may be restored by setting aside the order of the Ld.CIT on this issue. The Ld.AR on the other hand submitted that the estimation of turnover made by the Ld.CIT was improper because the assessee's actual turnover was much less comparing to the turnover worked out by the Ld.CIT. He further submitted that the Ld.CIT had also erred in estimating the net profit at 8% of the turnover because in the highly competitive Restaurant business the margin is very much lesser.

7. We have heard the rival submissions and carefully perused the materials on record.

8. From the facts of the case, it is apparent that the assessee has not maintained his books of accounts. In this situation, the Revenue has no other option but to estimate the income of the assessee on some logical basis. Considering the facts and circumstance of the case we are of the view that the Ld.CIT has fairly estimated the turnover of the assessee at Rs.75,180/- per day after examining the materials on record and thereafter came to a reasonable conclusion that the turnover of the assessee for the relevant assessment year 2012-13 is Rs.2.00 Crs. Further, we are of the view that the Ld.CIT(A) has fairly worked out the turnover of the assessee for the assessment year 2013-14 at Rs.2.20 Crs by estimating an increase of 10% for the subsequent assessment year. Therefore we do not find any infirmity in the orders of the Ld.CIT on this issue. However, we are of the opinion that the estimate of net profit at 8% on turnover with respect to Restaurant business is quite low. Though, the findings of the Ld.AO that in Restaurant business a bare minimum of 18% on turnover would be the net profit cannot be simply brushed aside, taking a lenient view, we hereby hold that the net profit of the assessee to be 10% of the turnover would suffice to meet the end of justice. Accordingly, we uphold the decision of the Ld.CIT

with respect to the determination of the turnover of the assessee for the assessment year 2012-13 & 2013-14 at Rs.2.00 & Rs.2.20 Crs., respectively and further direct the Ld.AO to compute the net profit of the assessee at 10% of the turnover for both the respective assessment years. Thus, both the grounds raised by the Revenue are disposed off.

9. Since we have confirmed the order of the Ld.CIT w.r.t. the determination of turnover for both the assessment years and further modified the order of the Ld.CIT w.r.t. the computation of the net profit, the cross-objection raised by the assessee in his CO stands dismissed.

10. In the result, the appeal of the Revenue is partly allowed and the Cross Objection raised by the assessee is dismissed.

Order pronounced on the 28th December, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 28th December, 2017

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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