

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
' C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI  
S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.966/CHNY/2018

निर्धारण वर्ष /Assessment year :2014-15

**M/s.Five Star Marine Exports Pvt Ltd.,** Vs. Deputy Commissioner of  
Income Tax,  
No.55,Venkatesan street, Corporate Circle-2,  
Chindadripet, Chennai.  
Chennai 600 002.

**[PAN AAACF 3541 N ]**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Philip George, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Mr.R.Clement RameshKumar,  
C.I.T DR

सुनवाई की तारीख/Date of Hearing : 14-06-2018  
घोषणा की तारीख /Date of Pronouncement : 14-06-2018

**आदेश / ORDER**

**PER GEORGE MATHAN, JUDICIAL MEMBER**

This is an appeal filed by the assessee against the order of  
the Commissioner of Income-tax (Appeals)-6, Chennai in appeal

No.358/CIT(A)-6/2016-17 dated 26.12.2017 for the assessment year 2014-15.

2. Mr.Philip George, represented on behalf of the Assessee and Mr.R.Clement RameshKumar represented on behalf of the Revenue.

3. It was submitted by Id.A.R that the assessee is a company, engaged in the business of export of sea foods. It was a submission that in the course of assessment, the Id. Assessing Officer had examined the books of accounts of the assessee and it was noticed that the assessee was paying commission to the agents for the procurement of the raw materials representing Prawns. It was a submission that on the ground that no TDS had been deducted, the Id. Assessing Officer had rejected the assessee's books of accounts and estimated the assessee's income. It was a submission that when estimating the income, the Id. Assessing Officer had adopted in estimating the income at 6% of the gross turnover without any comparable case nor considering the assessee's own net profits for the earlier assessment years. Ld.A.R drew our attention to page-49 of the Paper Book, which was a computation schedule in respect of net income percentage from the Financial Year 1997-98 to 2016-17. It was a submission that compared to the earlier years; the assessee had

disclosed 3.08%, which was substantially higher. It was a submission that during the Financial Year 2014-15, the percentage of net income was 3.51%, only after which the assessee was continuously incurring losses. It was a submission that the income as disclosed by the assessee was accepted in the Financial Years 2015-16 & 2016-17. Thus, the Id.A.R prayed that the estimation of income at 6% of the total turnover is excessive and arbitrary.

4. In reply, the Id.D.R vehemently supported the orders of Ld.CIT(A) and the Id. Assessing Officer. It was a submission that the assessee's net profit percentage over the earlier years should be considered as they were far below 3.08% disclosed by the assessee. It was further submitted that if at all, the net percentage was liable to be considered, the same should be considered for assessment year 2015-16 (F.Y 2014-15) wherein the assessee itself had disclosed 3.51% of net income to turnover.

5. We have considered the rival submissions. A perusal of the assessment order shows that the Id. Assessing Officer has not made disallowance in respect of non-deduction of TDS in respect of the

commission paid to the agents for the procurement of raw materials. In page-4 of the assessment order, the Id. Assessing Officer has worked out the same to ₹39.82 lakhs. However, a perusal of the assessment order shows that the Id. Assessing Officer has not disallowed the same by invoking the provisions of the section 40(a)(ia) of the Act. It is also not permissible for the Tribunal to make any addition in respect of the same on account of the fact that such an addition made would result in enhancement by the Tribunal for which the Tribunal admittedly does not have any powers. Consequently, considering the facts in the present case as it is noticed that the net profit rate is determined by the Id. Assessing Officer at 6% is without any comparable case, we are of the view that assessee's own case for the earlier assessment years and subsequent years are to be considered as the best comparable case in the case of assessee. We are unable to adopt the average of the earlier five years net profit percentage as the same would be far lower than the net profit declared for the current assessment year. However, considering the fact, no addition has been made on account of non-deduction of TDS and considering the fact, the assessee has disclosed higher net profit ratio for the immediately succeeding assessment years, the net profit of the assessee is determined at 3.5% of the total turnover. In these circumstances, the Id. Assessing Officer is directed to adopt net profit

rate at 3.5% of the gross turnover as against 6% adopted by him.  
Consequently, the appeal of assessee is partly allowed

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court after conclusion of hearing on  
14<sup>th</sup> June, 2018, at Chennai.

Sd/-  
(एस जयरामन)  
**(S. JAYARAMAN)**  
लेखा सदस्य/Accountant Member

Sd/-  
(जॉर्ज माथन)  
**(GEORGE MATHAN)**  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 14<sup>th</sup> June, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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