

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

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

श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.477/CHNY/2019

निर्धारण वर्ष /Assessment year : 2013-2014.

The Assistant Commissioner
of Income Tax,
Non Corporate Circle 13(1)
Chennai 600 034.

Vs.

M/s. Kumaran Nagar Estate,
No.22, Subramanian Swamy
Koil Street, Saidapet,
Chennai 600 015.

(अपीलार्थी/Appellant)

[PAN AAOFK 9617K]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. AR.V. Sreenivasan, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Suresh Kumar, Adv.

सुनवाई की तारीख/Date of Hearing

: 01-08-2019

घोषणा की तारीख /Date of Pronouncement

: 09-08-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax (Appeals)-14, Chennai ('CIT(A)' for short) dated 12.10.2018 for the Assessment Year (AY) 2013-2014.

2. The Revenue raised the following grounds of appeal:

'1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.

2. The Ld. CIT(A) erred in deleting the additions of Rs.1,92,12,840/- and directed to adopt 8% as per provisions of section 44AD for computing the income based on the submissions made by the assessee which is not in conformity with the remand report.

2.1 The Ld. CIT(A) ought to have appreciated the fact that the remand report was submitted after getting confirmation to the extent of Rs.79,29,075/- only out of the total additions made of Rs.1,92,12,840/- based on the additional documents submitted by the assessee during remand proceedings.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".

3. The brief facts of the case are as under:

The respondent-assessee namely M/s. Kumaran Nagar Estate, is a Partnership firm constituted under the Partnership Act. It is engaged in the business of real estate. The return of income for the AY 2013-14 was filed on 31.03.2015 disclosing total income of Rs.24,65,290/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Non Corporate Circle-13(1), Chennai (hereinafter called "AO") vide order dated 30.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of ₹2,16,77,530/- after making the following disallowance:-

<i>Disallowance of Land Development expenses</i>	:	<i>1,22,15,800/-</i>
<i>Disallowance of Salary expenses</i>	:	<i>16,98,157/-</i>
<i>Disallowance of Sales Promotion Advertising & Stationery Expenses</i>	:	<i>27,47,299/-</i>

<i>Disallowance of Travel Expenses</i>	:	<i>8,00,196/-</i>
<i>Disallowance of Road relaying expenses</i>	:	<i>17,50,786/-</i>

4. Being aggrieved by the above additions, the assessee preferred an appeal before Id. CIT(A), who vide impugned order partly allowed the appeal by directing the Assessing Officer to estimate the income under the provisions of Section 44AD of the Act by adopting profit of 8% and to allow excess estimated profit salary and interest paid to its partners.

5. Being aggrieved by the order of the CIT(A), the Revenue is in appeal before us in the present appeal. It is submitted that the provisions of Section 44AD of the Act had no application since assessee is not engaged in the business of civil construction or civil contractor. It is further submitted that the Id. CIT(A) had failed to consider the remand report submitted by the Assessing Officer. Thus, it is prayed that the order of the Id. CIT(A) should be set aside.

6. On the other hand, the Id. Authorised Representative placed reliance on the order of the Id. CIT(A).

7. We heard the rival submissions and perused the material on record. It is an undisputed fact that the assessee is in the business of real estate, therefore the provisions of Section 44AD of the Act have

no applicability to an assessee engaged in the real estate business. The Id. CIT(A) had clearly fell in error in applying the provisions of Section 44AD of the Act to the case on hand. Further, we find that the Assessing Officer had submitted remand report vide his letter dated 28.08.2018 which was not considered by the Id. CIT(A). On this set of facts, the order of the Id. CIT(A) cannot be sustained and therefore we set aside the order of the Id. CIT(A) and remit this matter back to the file of the Id. CIT(A) for denovo adjudication after affording due opportunity of hearing to the assessee.

8. In the result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced on 9th day of August, 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 9th August, 2019.

KV

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 |