

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA Nos.1674, 1675, 1676/Hyd/2016		
Assessment Year: 2003-04, 2004-05, 2005-06		
Lekkala Purushotham Naidu, D.No.2, Sai Nagar, Thummalagunta Bypass Road, Tirupati. PAN: ABGPL 4958 H	Vs.	DCIT, Central Circle, Tirupati.
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Smt. Nivedita Biswas, DR	
Date of hearing:	25/11/2019	
Date of pronouncement:	19/12/2019	

ORDER

These appeals are filed by the assessee against the orders of the Ld. CIT(A)-3, Visakhapatnam in appeal Nos.121, 77 and 78/2014-15/CIT(A)-3/VSP/2016-17, all dated 22/9/2016 passed U/s. 143(3) r.w.s 153A for the Assessment Years 2003-04 to 2005-06 respectively.

2. The assessee had raised several grounds in the appeals however, the crux of the issue for all the relevant assessment years is as under:

**AY 2003-04:**

- (i) The Ld. CIT (A) has erred in directing the Ld. AO to disallow 6% of the expenditure without estimating the income U/s. 44AE of the Act.
- (ii) The Ld. CIT (A) has erred in confirming the levy of interest charged U/s. 234A, B and C of the Act.

**AY 2004-05:**

- (i) The order of the Ld. CIT (A) has erred in directing the Ld. AO to disallow 6% of the expenditure without estimating the income U/s. 44AE of the Act.
- (ii) The Ld. CIT (A) has erred in confirming the addition of Rs. 2 lakhs with respect to loan received from Sri N. Rammurthy Naidu.

**AY: 2005-06:**

- (i) The Ld. CIT (A) has erred in directing the Ld. AO to disallow 6% of the expenditure without estimating the income U/s. 44AE of the Act.
- (ii) The Ld. CIT (A) has erred in confirming the levy of interest charged U/s. 234A, B and C of the Act.

3. Brief facts of the case are that the assessee is an individual engaged in the business of transportation in the name of his proprietary concern M/s. VSN & Co. A search operation U/s. 132 of the Act was carried out in the residence of the assessee on 25/7/2008 and thereafter assessment was completed U/s. 143 (3) r.w.s 153A of the Act for all the three assessment years wherein the Ld. AO made certain additions. On appeal, the ld. CIT (A) granted partial relief aggrieved by which the assessee is now in appeal before us.

**Ground No.(i):- Disallowance of 6% of the expenditure**

**AY: 2003-04, 2004-05 and 2005-06:**

4. Since the issue and the ground is identical in all the three years, common decision is rendered herein below:-

5. In the profit & Loss account the assessee had debited hire charges of Rs. 58,67,832/-, Rs. 1,04,80,520/- and Rs. 1,42,71,828/- for the AY 2003-04, 2004-05 and 2005-06 respectively. The assessee was asked to submit evidence in support of the claim of expenditure. However, the assessee submitted that the books of accounts were lost while shifting from Tirupati to Hyderabad. The assessee also produced the copy of the FIR filed by him in this regard. Since, the FIR did not contain the details of the loss as explained by the assessee, the Ld. AO disallowed 10% of the expenditure on estimation for all the relevant assessment years. On appeal, the Ld. CIT (A) granted partial relief to the assessee by

estimating the disallowance of expenditure at 6%. The Ld. AR submitted before us that the income of the assessee may be estimated U/s. 44E of the Act as the assessee is not owning more than 10 goods carriage at any time during the relevant previous years. The Ld. DR on the other hand submitted that the Ld. CIT (A) had obtained remand report wherein the Ld. AO mentioned that the case of the assessee does not fall under the provisions of section 44AE of the Act. However we find from the Order of the Ld.CIT(A), the reasons as to why in the case of the assessee assessment cannot be made U/s. 44E of the Act. In this situation, we do not have any other option but to remand the matter back to the file of the ld. AO in order to give a categorical finding as to why the provisions of section 44AE of the Act will not be applicable in the case of the assessee with all details as the same is not clear from the order of the Ld. Revenue Authorities. Accordingly, this ground of the assessee is remitted back to the file of the Ld. AO for de novo consideration for all the three assessment years.

**Ground No.(ii):- Interest U/s. 234A, B and C of the Act**

**AY: 2003-04 and 2005-06:**

6. Interest U/s. 234A, B and C of the Act is consequential in nature. Accordingly, the issue is held against the assessee.

**Ground (ii) : Addition of Rs. 2 lakhs with respect to loan received  
from N. Rammurthy Naidu (AY: 2004-05)**

7. The assessee had received a sum of Rs. 2 lakhs from Sri N. Rammurthy Naidu against which he could not produce confirmation letters before the Ld. AO. Therefore, the Ld. AO added the same as unexplained cash credit U/s. 68 of the Act in the hands of the assessee. On appeal, the Ld. CIT (A) obtained a remand report from the Ld. AO wherein it was mentioned that the assessee could not furnish any evidence towards the same. Therefore, the Ld. CIT (A) confirmed the order of the Ld. AO. Since, we have remitted back the issue with respect to disallowance of 6 % of expenditure back to the file of the Ld.AO for fresh consideration, in the interest of justice we remit this issue also back to the file of the Ld. AO for de novo consideration in order to provide one more opportunity to the assessee to justify his claim. It is ordered accordingly.

8. In the result, the appeals of the assessee for the AYs 2003-04 and 2005-06 are partly allowed for statistical purposes and the appeal for the AY 2004-05 is allowed for statistical purposes.

Pronounced in the open Court on 19<sup>th</sup> December, 2019.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 19<sup>th</sup> December, 2019

*OKK*

Copy to:-

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- 2) DCIT, Central Circle, 3<sup>rd</sup> Floor, Aayakar Bhavan, K.T. Road, Tirupati-517507.
- 3) The CIT(A)-3, Visakhapatnam.
- 4) The Pr. CIT (Central), Visakhapatnam.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File