

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं

श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3280/CHNY/2019

निर्धारण वर्ष /Assessment year : 2017-2018.

M/s. PVN Associates,
Flat No.1, 3rd Floor,
Viswapriya Apartments,
No.3, 1st Cross Street,
Kasturibai Nagar, Adyar,
Chennai 600 020.

Vs. The Income Tax Officer,
Non Corporate Ward 8(4)
Chennai 600 034.

[PAN AAJFP 7065R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. SP. Chidambaram, Adv

प्रत्यर्थी की ओर से /Respondent by

: Shri. J. Pavithran Kumar, JCIT.

सुनवाई की तारीख/Date of Hearing

: 29-01-2020

घोषणा की तारीख /Date of Pronouncement

: 30-01-2020

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-9, Chennai ('CIT(A)' for short) dated 14.10.2019 for the Assessment Year (AY) 2017-2018.

2. The Assessee raised the following grounds of appeal:

'1. The Order of the Commissioner of Income-tax (Appeals) is contrary to Law, facts and circumstances of the case.

2. The Commissioner of Income-tax (Appeals) erred in confirming the order of the Assessing Officer in making addition under Section 44ADA of the Act.

3. The Commissioner of Income-tax (Appeals) erred in not appreciating that the Assessing Officer (i.e. The Deputy Commissioner of Income-tax, CPC, Bengaluru) committed a mistake while issuing intimation under section 143(1)(a) of the Act and as such the order under Section 143(1)(a) of the Act is required to be rectified under Section 154 of the Act.

4. The Commissioner of Income-tax (Appeals) ought to have appreciated that when the AO fails to rectify the apparent mistake in the intimation issued under Section 143(1)(a) of the Act, the issue of correct assessment of income of the Appellant under Section 44AD of the Act gets merged with the rectification order and as such the Commissioner of Income-tax (Appeals) erred in his findings.

5. The Commissioner of Income-tax (Appeals) ought to have appreciated that the Appellant is an "eligible assessee" as per Section 44AD of the Act and therefore, it has correctly offered its income under Section 44AD of the Act.

6. The Commissioner of Income-tax (Appeals) erred in not appreciating that Section 44ADA of the Act is not applicable to the Appellant as the Appellant is not carrying on any profession.

7. The Commissioner of Income-tax (Appeals) erred in not appreciating that Section 44ADA of the Act is not applicable to the Appellant as the Appellant is not carrying on any profession.

8. The Commissioner of Income-tax (Appeals) ought to have appreciated that merely because TDS done by payer's under Section 194J of the Act cannot be a conclusive and/or a determinative factor to decide the Section under which Appellant's income is taxable.

9. Without prejudice to all the above, the Commissioner of Income-tax (Appeals) ought to have appreciated that the same income is taxed twice by the AO i.e. under Section 44AD as offered by the Appellant and once again under Section 44ADA as mentioned in the intimation under Section 143(1)(a) falling within the scope of mistake apparent from record as envisaged in section 154 of the Act. Therefore erred in confirming, the order passed by the AO under section 154 of the Act.

10. The Commissioner of Income-tax (Appeals) ought to have appreciated that the AO has given short credit for TDS credit instead of granting credit of TDS as per Form 26AS.

11. The Appellant craves Leave to add, alter, amend, substitute, rescind, modify and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal”.

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

The appellant namely M/s. PVN Associates, is a Partnership firm constituted under the Partnership Act. It is engaged in the business of vertical transportation consultancy services. The return of income for the AY 2017-18 was filed on 21.07.2017. Based on the receipt of return of income, CPC issued two show cause notices dated 21.05.2018 and 23.10.2018 proposing adjustments u/s.143(1) (a) of the Income Tax Act, 1961 (in short "the Act") on the ground that there is inconsistency in the amount shown under the head "Profits and loss" of business offered under presumptive taxation and the amount of receipts available in form 26AS against Section 194J of the Act. The CPC is of opinion that receipts u/s.194J of the Act cannot be offered to tax u/s.44AD of the Act. Finally intimation u/s.143(1) (a) of

the Act was issued on 26.03.2019 assessing the total income under the head income from business of ₹53,71,789/- as against income offered of ₹7,52,620/-. The disparity between the income assessed and income offered is on account of denial of benefit of presumptive tax u/s.44AD of the Act.

4. Being aggrieved by the intimation, two rectification petitions were filed on 19.04.2019 and 10.09.2019. The rectification petition dated 19.04.2019 came to be dismissed vide order dated 14.05.2019 rejecting the contention of the assessee.

5. Being aggrieved, an appeal was filed before Id. CIT(A) who vide impugned order confirmed the action of the CPC.

6. Being aggrieved, the appellant is in appeal before us in the present appeal. It is contended that CPC had travelled beyond the jurisdiction conferred u/s.143 (1) (a) of the Act while denying the benefit of presumptive tax in respect of the business receipts simply based on the TDS paid by the payer of the amount. He placed reliance on CBDT Circular No.689, Dated 24.08.1994.

7. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

8. We heard the rival submissions and perused the material on record. The short issue involved in the present appeal relates to scope and ambit of adjustments under clauses (i) to (iii) of the proviso to Section 143(1) (a) of the Act. The said proviso hinges on the expressions "prime facie admissible" and "prime facie inadmissible". The CBDT circular No.689, dated 24.08.1994 clarified that prime facie means on the face of it. The Hon'ble Supreme Court in the case of *T.S. Balaram ITO vs. Volkari Brothers, (1971) 80 ITR 50* had held that mistake can be rectified under Section 154 of the Act, only if it is an obvious and patent mistake and not something which can be established by long drawn process of reasoning on points on which there may conceivably be two opinions. There is no gain saying that TDS provisions are only mechanism envisaged by the Parliament as one of the modes of recovery of taxes. These are not substantive provisions to determine the true nature of receipt of income. The nature of receipt can be determined having regard to the substance of the transactions underlying the receipt of the money. This can be decided only in the regular assessment proceedings but not under proceedings u/s.143 (1) (a) of the Act as classified by the CBDT Circular No.689, dated 24.08.1994. If at all, the Assessing Officer feels that assessee is not eligible for presumptive tax, regime the only course open to him is to select the case for scrutiny assessment and

not to make prima facie adjustment as contemplated u/s.143(1) (a) of the Act. The action of the lower authorities is against the very spirit of provisions of Section 143(1) (a) of the Act as clarified by the CBDT Circular No.689, dated 24.08.1994. In the circumstances, we set aside the orders of the lower authorities and allow the appeal filed by the assessee.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 30th day of January, 2020 at Chennai.

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

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 30th January, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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