

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 2668/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2012-13

Shri Lakshmanan,
No.47/16, Mambalam High
Road, T.Nagar,
Chennai – 600 017.

The ITO,
v. Non-Corporate Ward – 1(3),
Chennai – 34.

PAN: AAVPL 7411M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri V. Sreeraman, CA
: Shri Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing : 11.03.2021
घोषणा की तारीख/Date of Pronouncement : 28.04.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-2, Chennai, dated 22.07.2019 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. The Appellate Authority in his order dated 22nd July 2019' had not provided any explanation or reasoning for not considering any of the submissions produced before him including the additional submissions produced before him in writing during the hearing conducted on 30th January 2019 more specifically the citations of the cases (ITAT and High Courts). The appellant is at a loss to understand as to why the Appellate Authority has conveniently chosen not to respond to any of the submissions consequently the appellant humbly submits that the order is not complete in all respects and is considered not to be a speaking order in itself.
2. With reference to the action of the AO in rejecting the books of accounts, the appellant would like to check whether the AO had in letter and spirit followed a due diligent process before proceeding to reject the books of accounts. This is accentuated by the fact that the order of the AO does not mention of any efforts taken to find out the bonafide of transactions either by calling for an explanation from the qualified accountant who had carried out tax audit for the relevant AY nor trying to examine the nature of transactions with counter parties. Hence, it is submitted by the appellant that the provisions of Sec. 145(3) being invoked by the AO is not justifiable.
3. Moreover, after having proceeded to reject summarily the books of accounts, the AO had considered the gross receipts mentioned therein as the basis of total income considering a 5% of the gross receipts to indicate the same. The appellant would like to submit humbly that this is not justified and is incongruous.
4. The appellant has relied on the following case laws-
 - a. Samwon Precision Mould Manufacturing (India) Private Limited v Income Tax Officer 2016 (4) TMI 1094 - ITAT Delhi
 - b. Vrailal Munilal & Company v Commissioner of Income Tax 1972 (11) TMI 9 - Madhya Pradesh High Court
 - c. Karnataka State Forest Industries Corporation Limited v Commissioner of Income Tax 1992 (10)TMI (65) - Karnataka High Court
 - d. Commissioner of Income Tax v Gupta K N Construction Company 2015 (5) TMI 315 – Rajasthan High Court
 - e. Commissioner of Income Tax v Surejeet Singh Maheshkumar 1993 (11) TMI 22 - Allahabad High Court

3. The brief facts of the case are that the assessee is engaged in the business of civil contracts, filed his return of income for the assessment year 2012-13 declaring total income of Rs.3,74,216/- and the said return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter the 'Act'). The case has been subsequently reopened u/s.147 of the Act, for the reasons recorded as per which income chargeable to tax had escaped assessment, on account of lower profit from business. Therefore, notice u/s.148 of the Act was issued and served on the assessee. In response to notice, the assessee has filed return on 08.11.2017, declaring total income as admitted in the original return of income filed u/s.139(1) of the Act. The case was taken up for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to furnish books of accounts and other evidences to justify various expenditures debited into the profit & loss account. Since, the assessee failed to produce relevant documents and has also filed a letter stating that in absence of bills and vouchers in support of expenditures, net profit of 3% may be estimated on total receipts from contracts, the AO has rejected books of accounts u/s.145(3) of the Act and completed

best judgement assessment as per provisions of section 144 r.w.s. 143(3) of the Act and estimated 5% profit on gross receipts. The relevant findings of the AO are as under:-

4. The assessee failed to produce the relevant documents and his letter received on 14.11.2017, and the Authorized Representative clearly expressed his inability to provide books of accounts. Further, the Authorized Representative categorically stated that he did not possess any evidence of vouchers or any other things. For easier comprehension, the copy of the said letter is captured and provided below:

5. The Authorized Representative was appraised that in an event of failure to provide the books of accounts and bills/vouchers in support of the claim of expenses, the undersigned would be construed to complete the assessment, based on an estimate of income. The Authorized Representative had also, in the above letter expressed his consent to undertake an addition to total income computed @ 3%

6. The nature and characteristics of the contents of the audit report by itself exemplifies that the accounts have not been maintained as per the mandate of the Act. The same is confirmed by the affirmative letter of the Authorized Representative who categorically and clearly expressed that the vouchers, bills etc are not available. Under the above circumstance, the undersigned is unable to get satisfied about the correctness and completeness of the accounts of the assessee and hence could not place reliance on the financials and the audit report filed. The undersigned is therefore construed to invoke the provisions of sec 145(3) and proceed to make an assessment in the manner provided in sec. 144. As the correctness and completeness of the accounts is not substantiated by the assessee, the books of accounts are hereby rejected u/s.145(3) and accordingly, a best judgement as per the provisions of section 144 of the Act comes into operation.

7. Taking into account all relevant material which have been gathered during the course of the reassessment proceedings, I hereby find it reasonable to estimate the total income of the assessee computed @ 5% on the gross receipts. Based on the discussion made above, the taxable income is redrawn at Rs.15,57,090/-.

4. The assessee carried the matter in appeal before the first appellate authority but could not succeed. The Id.CIT(A) dismissed the appeal filed by the assessee and confirmed estimation of profit at the rate of 5% on gross receipts by holding that if the AO is not satisfied about correctness or completeness of the account, he may make assessment in the manner provided u/s.144 of the Act. Therefore, there is no error in the findings recorded by the AO to reject books of accounts u/s.145(3) of the Act and estimation of profit at his best judgement assessment as per the provisions of section 144 of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in rejection of books of books and estimation of profit at the rate of 5% without appreciating the fact that the books of accounts of the assessee were audited under the provisions of section 44AB of the Act and no adverse comments from the auditor on books of accounts maintained by the assessee. In absence of any adverse comments from the auditor, books of accounts cannot be rejected merely for the reason that no

supporting bills and vouchers are produced for expenses. The AR further submitted that even the books of accounts are rejected u/s.145(3) of the Act, but estimation of profit should be reasonable having regard to the nature of business of the assessee. In this case, the assessee is into civil contracts, where net profit varies from 2 to 3% depending upon the nature of contracts and place of contracts, where the assessee has undertaken works. Therefore, without any basis, no adhoc estimation can be made towards profit from business.

6. The Id.DR on the other hand strongly supporting order of the CIT(A) submitted that once books of accounts are rejected u/s.145(3) of the Act, then the AO is empowered to pass best judgement assessment as per the provisions of section 144 of the Act, having regard to nature of the business of the assessee. Therefore, there is no merit in the arguments of the assessee that there is no basis for adopting 5% profit on gross receipts. The CIT(A) after considering relevant facts has rightly upheld the order of the AO and his order should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the Id.AR for the assessee has filed a letter dated 14.11.2017 and expressed his inability to produce supporting bills and vouchers for various expenditures debited into the profit & loss account. It is also an admitted fact that the Id.AR for the assessee agreed for estimation of profit on gross receipts. Therefore, based on the inability of the Id.AR for the assessee to produce necessary bills and vouchers, the AO has rejected books of accounts u/s.145(3) of the Act and resorted to best judgement assessment as per provisions of section 144 of the Act. It is an admitted fact that if books of accounts maintained by the assessee are incomplete or not supported by necessary evidences then the AO is empowered to complete assessment in the manner provided in section 144 of the Act. But fact remains that still in the best judgement assessment, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to rate of profit for estimation of income from the business. No doubt, under the best judgement assessment there is an element of guesswork but

it should not be arbitrary. Therefore, while completing the assessment under best judgement assessment, the AO has to bring on record certain material to support his finding with regard to rate of profit admitted for estimation of profit with some comparable cases of similar nature or the profit declared in the similar industry. In this case, although the AO has adopted 5% net profit on gross receipts, but failed to bring on record any comparable case of similar nature nor give reasons for adopting such rate of net profit. On the other hand, the assessee has agreed for estimation of 3% profit on gross receipts considering the nature of business and place of work. Further in the civil construction work, the rate of profit varies from nature of contract executed by the assessee and place of such contracts. Therefore, no uniform yardsticks can be applied for estimating net profit. Therefore, considering the fact that the assessee is into civil construction business and also the AO has not given any reasons for adopting 5% net profit rate, we are of the considered view that a reasonable profit of 3% on total receipts would meet the ends of justice. Therefore, we direct the AO to estimate 3%

profit on total gross receipts received by the assessee for the year.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the court on 28th April, 2021 at Chennai.

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष /Vice President

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th April, 2021

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. |