

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
 (Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.7230/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकरअपील सं./ I.T.A. No.7229/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2015-16)

ACIT-25(1) Room No.202, 2 nd Floor Kautilya Bhavan Bandra Kurla Complex, Bandra (E) Mumbai-400 051	बनाम/ Vs.	Shukla Bholanath Rajpati 200/A, 2 nd Floor Green Tower CHS Ltd. Gilbert Lane, Andheri (W) Mumbai-400 053
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABFPR-2174-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Bharat Kumar -Ld. AR
Revenue by	:	Shri Vijay Kumar Jaiswal – Ld. CIT- DR
सुनवाई की तारीख/ Date of Hearing	:	08/07/2021
घोषणा की तारीख / Date of Pronouncement	:	27/07/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2014-15 & 2015-16 contests separate orders of learned first Appellate Authority. However, facts as well as issues are stated to

be identical and therefore, appeals were heard together and are now being disposed of by way of this common order for the sake of convenience and brevity.

2. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. The Ld. AR submitted that the appellate authority has merely followed the order of Tribunal in assessee's own case for earlier years i.e., AYs 2009-10 to 2013-14 and therefore, the impugned order would not require any interference on our part. A copy of the Tribunal order has been placed on record. The Ld. CIT-DR sought distinction in fact by submitting that the applicability of provisions of Sec. 40A(3) as well as 40(a)(ia) has not been examined. Our adjudication to the subject matter of appeals would be as given in succeeding paragraphs.

3.1 The material facts in AY 2014-15 are that the assessee being resident individual is stated to be engaged as toll-collection contractor as well as vehicle parking contractor under proprietorship concern namely M/s S.S.Enterprises. The other family members of the assessee are also engaged in the same line of business under their different proprietorship concerns. An assessment was framed for the year under consideration u/s 143(3) on 31/12/2016 wherein it transpired that the assessee reflected profit of Rs.31.54 Lacs against business receipts which translated into Net Profit Rate of 1.7%.

3.2 During survey action u/s 133A on 19/03/2015 on business premises of the assessee and his family members, it was noted that total receipts of the assessee were approx. Rs.300 Crores

whereas approximate expenses were not more than Rs.10 Crores under the head salary & wages, stationery items, staff welfare, conveyance, petrol & diesel, rentals & other expenses. The assessee's books of account were not found at the business premises rather it was noted that the assessee did not maintain books for the year. Accordingly, Ld. AO disallowed 55% of salary expenses & 45% of other expenses as detailed in the assessment order. The estimation was in line with estimation made in immediately preceding AY 2013-14.

4. During appellate proceedings, the assessee assailed the action of Ld. AO, inter-alia, by relying upon Tribunal's order for earlier years in assessee's own case. The Ld.CIT(A), after considering factual matrix as well as assessee's submissions, noted that profit rate shown by the assessee in earlier years ranged between 1.78% to 2.48%. Post survey period, the profit rate was in the range of 2.34% to 2.72%. In this year, the profit percentage was 1.70%. Similar estimation in AY 2009-10 was made @3% during appellate proceedings which was confirmed by the Tribunal. Therefore, accepting the same, Ld. AO was directed to adopt Net Profit Rate of 3% and delete the balance additions. Aggrieved, the revenue is in further appeal before us whereas apparently, the assessee has accepted the verdict of Ld. CIT(A)

5. Upon careful consideration of factual matrix, we find that facts in this year are quite identical to facts in earlier years. In fact, Ld. AR has placed on record a chart to demonstrate that grounds raised by revenue in AYs 2009-10 to 2015-16 are substantially the same. No change in facts could be demonstrated by department

before us. Therefore, since the estimation of 3% made by Ld. CIT(A) in earlier years has been confirmed by the Tribunal vide ITA Nos. 4505/Mum/2018 & ors. common order dated 02/04/2019 and the estimation in this year is similar, we find no reason to interfere in the impugned order. Accordingly, we dismiss the revenue's appeal. So far as the arguments of applicability of Sec.40A(3) or 40(a)(ia) as made by Ld. CIT-DR is concerned, we are of the opinion that since income has been estimated without reference to any books, separate additions in that respect would not be justified. Finally, the appeal stands dismissed.

Assessment Year 2015-16

6. The facts as well as issues are similar in this year. The Ld. AO disallowed certain expenses. Upon further appeal, Ld. CIT(A) directed Ld. AO to estimate the income @3%. Aggrieved, the revenue is in further appeal before us. Facts being pari-materia the same as in AY 2014-15, taking the same view, we dismiss the appeal.

Conclusion

7. Both the appeals stand dismissed.

Order pronounced on 27th July 2021

Sd/- (Amarjit Singh) न्यायिक सदस्य / Judicial Member	Sd/- (Manoj Kumar Aggarwal) लेखा सदस्य / Accountant Member
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मुंबई Mumbai; दिनांक Dated : 27/07/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.