

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.228/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015-16

Shri V. Seetharaman,
No.5, Kappiyampuliyur,
Main Road,
Villupuram – 605 601.
[PAN: AACPR 0873L]

**The Asst. Commissioner of
Income Tax,**
Vs. Villupuram Circle,
Villupuram.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

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

: Mr. S. Sridhar, Advocate
: Mr. AR.V. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 06.10.2021
: 06.10.2021

आदेश / ORDER

Per V. Durga Rao, Judicial Member:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), Puducherry in I.T.A No.62/CIT(A)-PDY/2017-18 dated 15.11.2018 relevant to the Assessment Year 2015-16.

2. The grounds of appeal raised by the assessee are reproduced as under:

"1. The order of the Commissioner of Income Tax (Appeals), Puducherry dated 15.11.2018 in I.T.No.62/CIT(A)-PDY/2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the disallowance of expenses of Rs.24,35,542/- at 5% of such expenses booked/claimed aggregating to Rs.4,87,76,845/- for want of further evidence in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the estimated disallowance of such expenses was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that having not examined the relevant materials while further having not examined the pattern of income and expenditure reported, the sustenance of estimated disallowance of such expenses was wholly unjustified.

4. The CIT(Appeals) failed appreciate that there was no proper opportunity given before passing the impugned order and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.

5. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. Grounds of appeal No.1 & 5 are general in nature, no adjudication is required hence, dismissed. Grounds of appeal No.2 to 4 are relating to only one issue relating to disallowance of expenses at Rs. 24,35,542/-.

4. The brief facts of the case are that the assessee is a Govt. Civil Contractor and he has not maintaining regular books of accounts and estimated the income @ 4% of the gross receipts. The assessee claimed expenses of Rs.4,87,76,845/- for purchase, wages, etc.

Regarding the above mentioned expenditure, he did not submit any proof to substantiate the claim of the expenses and also not filed any proof regarding payment for expenses. Accordingly, the A.O has disallowed 5% of the total purchases, wages and expenses of Rs. 24,35,542/- and added to the total income of the assessee.

5. On appeal, the Ld. CIT(A) has confirmed the order passed by the A.O.

6. Before us, the Id. Counsel for the assessee has submitted that the assessee is not maintaining the proper books of accounts and the payment made by the assessee in respect of purchase of sand, gravel and other material on day to day basis it is difficult to maintain the books of accounts. In respect of wages, it is submitted that day to day basis wages has to be paid by the assessee to the Coolies. Therefore, it is not possible to submit bills and vouchers for this day to day expenditure incurred by the assessee and thus, the disallowance of 5% is very excessive and reasonable disallowance may be restricted to 2% instead of 5%.

7. On the other hand, the Ld. D.R strongly supported the orders passed by the A.O as well as Ld. CIT(A).

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is a Civil Contractor and the expenditure incurred by the assessee mainly for the purpose of purchase of sand and gravel and the wages has to be paid day to day basis to the Coolies. Therefore, he was unable to substantiate the expenditure with the help of bills and vouchers. Under the above facts and circumstances of the case, we are of the opinion that the disallowance has to be restricted to 3% instead of 5%. Accordingly, we direct the A.O to calculate the disallowance 3%. Thus, the grounds of appeal No.2 to 4 raised by the assessee is partly allowed.

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

Order pronounced on 06th October, 2021 in Chennai.

Sd/-

(श्री जी मंजूनथ)

(G. MANJUNATHA)

लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-

(वी दुर्गार)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 06th October, 2021.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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