

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.: 51/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2015-16

Shri Ramakrishnan,
C 412, Fourth Street,
Periyar Nagar,
Chennai – 600 082.

The Income Tax Officer,
v. Non-Corporate Ward-19(4),
Chennai - 34.

PAN: AAEP R 7485C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Ramakrishnan, Assessee

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Muthushankar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 27.04.2022

घोषणा की तारीख/Date of Pronouncement

: 27.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Chennai in ITA No.139/CIT(A)-12/17-18 dated 31.10.2018. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 19(4), Chennai u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment year 2015-16 vide order dated 08.12.2017.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in making assessment u/s.44AD of the Act on presumptive basis despite the fact that the assessee has maintained books of account as prescribed u/s.44AA of the Act. For this assessee has raised various grounds and even in concise grounds, he has raised various argumentative issues, which need not to be reproduced.

3. At the outset, the assessee stated that the assessment was framed by the AO by applying the provision of section 44AD of the Act by presuming the percentage of income by stating that the assessee has declared a loss of Rs.6,64,234/- from the sale of future transactions and accordingly, he is not supposed to maintain the books of account nor to get the books of account audited. According to AO, since the total turnover / gross receipts during the financial year 2014-15 relevant to this assessment year 2015-16 does not exceed the amount of Rs.1 crore and the assessee's nature of business being sale of future transactions (derivatives in recognized stock exchange) and hence, falls under eligible business as defined u/s.44AD of the Act. Therefore, the AO computed profit rate @ 8% and made addition of Rs.33,520/-. Aggrieved, assessee preferred

appeal before CIT(A). The CIT(A) also confirmed the action of AO by observing in para 5.1 as under:-

“5.1 The appellant has reiterated the submissions raised before the AO. The appellant has not maintained books of accounts. The turnover of the appellant was below Rs.1 crore. In such circumstances, the only option before the AO is to apply the provisions of Section 44AD. Had the appellant produced books of accounts, there was no necessity to assess the deemed income. The appellant has declared in his return that he is not liable for maintaining and auditing books of accounts.”

3.1 In view of the above, the assessee stated once he has maintained books of account and produced before the AO during the course of scrutiny assessment, the AO is supposed to make assessment as per the provisions of the Act and to determine the true income from the accounts particularly when the assessee has maintained books of account in term of section 44AA of the Act. Accordingly, the assessee stated that matter can be remanded back to the file of the AO to make assessment in term of normal provisions and not u/s.44AD of the Act.

4. On the other hand, the Id.Senior DR supported the orders of lower authorities.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that admittedly the AO has made assessment by invoking provisions of section 44AD of the Act

and estimated profit rate on presumptive basis. The assessee before us made statement at bar that he has maintained books of account, which were produced before the AO during scrutiny assessment proceedings and even now he is ready to produce before the AO, in case the matter is remanded back to the file of the AO. We noted from the provisions of section 44AD, sub-section (5), as existed during the relevant assessment year 2015-16 and the same reads as under:-

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

5.1 From the above provision, it is clear that the assessee can declare lower profit also in case the assessee has maintained books of account and in this case, as claimed by the assessee before Bench that he has maintained books of account, in that eventuality we are of the view that the orders of lower authorities needs set aside. Hence, the orders of lower authorities are set aside and matter remanded back to the file of the AO for making assessment on the basis of books of account. Accordingly, the AO will reframe the

assessment after allowing reasonable opportunity of being hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27th April, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27th April, 2022

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. |