

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.923/Chny/2019
निर्धारण वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of
Income Tax, Circle 1,
Namakkal

Vs. Shri M.S. Veerappan,
No. 66/4, Avaramkattu Pudur,
Melsathampur Post,
Namakkal 637 206.

[PAN:ACZPV7899M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nandakumar, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri T.S. Subramaniam, FCA
सुनवाई की तारीख/ Date of hearing : 11.07.2022
घोषणा की तारीख /Date of Pronouncement : 12.08.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals), Salem, dated 28.01.2019 relevant to the assessment year 2013-14 in restricting the net profit of gross receipts from 8% to 4%.

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2013-14 on 21.12.2013 declaring an

income of ₹.28,50,370/-. The return of income was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Subsequently, the case of the assessee was selected for scrutiny under CASS and notice under section 143(2) of the Act was issued and duly served on the assessee. In the assessment order, the Assessing Officer has observed that the assessee has produced self-made vouchers in support of the claim of labour jalli expenses cannot be cross verified and moreover, the assessee could not produce labour wages register or attendance register. Further the Assessing Officer has noted that the wage expenses and jalli expenses contribute to 50% of total receipts and moreover, 50% of his total expenses claimed based on self-made vouchers. In view of the decision in the case of CGT v. A. Vajjram Bros. 326 ITR 551 (Mad), the Assessing Officer has estimated the net profit at ₹.1,40,26,683/- being 8% of the gross contract receipts of ₹.17,52,08,538/- and brought to tax. On appeal, after considering the submissions of the assessee, the Id. CIT(A) directed the Assessing Officer to adopt net profit at 4%.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that since the assessee has furnished only self-

made vouchers and also not provided labour wages register/ attendance register, the Id. CIT(A) has erroneously restricted the estimation of net profit from 8% to 4% and pleaded for reversing the order passed by the Id. CIT(A) and that of the Assessing Officer is restored.

4. On the other hand, the Id. Counsel for the assessee has submitted that the assessee has undertaken the civil works in the remote rural villages of Namakkal District, where it is impossible to get pakka bills/vouchers. By filing financial statements of various earlier years evidencing the average net income to gross receipts is 2.23% for the year ended 31.03.2013 when compared to earlier three years, the Id. Counsel has submitted that there is absolutely no inflation of expenses and prayed to adopt the net income of 2.23% as could be evidenced from the financial statements placed on record.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee filing financial statements of earlier years. In this case, the Assessing Officer has estimated the net profit at 8% of the gross contract receipts in the absence of any labour wages

register or attendance register and the assessee produced only self-made vouchers for the purchase of jalli. On appeal, the Id. CIT(A) directed the Assessing Officer to adopt net profit at 4%. Before us, by filing financial statements of previous three years, the Id. Counsel for the assessee has prayed to adopt the net income of 2.23%.

6. In the present case, on perusal of the assessment order, we find that the Assessing Officer has not pointed any discrepancies in the books of account but rejected the books of account. By way of paper book, the assessee has furnished copy of the financial statements filed along with the return of income for the assessment year 2013-14 with 44AB audit report, which shows that the assessee has got the accounts audited as provided by the Act. This being so, the Assessing Officer cannot adopt the rate as per section 44AD of the Act by rejecting the books of accounts by stating general observation that the civil contractors inflate the expenditure by making self-made vouchers.

7. Moreover, in the case law relied on by the Assessing Officer in the case of CGT v. Vajjram Bros (supra), the assessee has not accounted the correct receipts and on that basis the Assessing Officer has computed the total income of the assessee by applying the

provisions of section 44AD of the Act when the books of account are not maintained. However, in the present, once the tax audit report under section 44AB of the Act has been filed before the Assessing Officer, the case law relied on by the Assessing Officer has no application to the facts of the present case.

7. The assessee has filed the comparison of net profit to gross receipt in road laying contract for the year under appeal and earlier three years, which is reproduced as under:

Year Ended	Total contract receipts	Net profit as per I & E a/c	% of net profit to receipts	Depreciation Claimed	Net income before Dep. claim	% of net profit to receipts
1	2	3	4	5	6 (3+5)	7
31.03.13	17,52,08,538	29,60,369	1.69%	9,41,211	39,01,580	2.23%
31.03.12	9,21,90,617	13,05,167	1.42%	9,08,635	22,13,802	2.40%
31.03.11	7,55,81,313	12,89,567	1.71%	1,03,015	13,92,582	1.84%
31.03.10	13,12,58,102	26,30,871	2.00%	1,21,194	27,52,065	2.10%

8. From the above comparison of the net income to gross receipts, it is evident that the maximum net income obtained by the assessee was 2.40%, whereas, the Id. CIT(A) in his order has given direction to the Assessing Officer to adopt 4% on the adjusted turnover, which appears to be on higher side. Keeping in view of the earlier years net profit to the receipt, we are of the considered opinion that the estimation at 3% would be reasonable and accordingly, the addition is

restricted to 3% and modified the order passed by the Id. CIT(A).

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 12th August, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 12.08.2022

Vm/-

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.