

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.216/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

Ranganathan Pavadai Nattar Nangarajan No.13-A, Market Street, Thiruppadhiripuliyur, Cuddalore – 607 002.	बनाम/ Vs.	ITO, Ward-1, Cuddalore.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ACAPN-7902-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Banusekar (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri M. Rajan (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	08-09-2022
घोषणा की तारीख / Date of Pronouncement	:	08-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee challenges the revisional jurisdiction u/s. 263 as exercised by learned Principal Commissioner of Income Tax, Chennai 3 [Pr.CIT] vide order dated 11-03-2022. The assessment for this year has been framed by Ld. AO u/s 143(3) on 31.12.2019.
2. The Ld. AR advanced arguments supporting the assessment order which has been controverted by Ld. CIT-DR. Having heard rival submissions, the appeal is disposed off as under:

3. Upon perusal of the assessment order, it could be seen that Ld. AO was not satisfied with the Business Receipts of Rs.57.27 Lacs as reflected by the assessee. The receipts arose out of sale of iced fish trade. The income was offered on presumptive basis u/s 44AD @8%. The assessee also reflected commission income of Rs.6.95 Lacs as Income from other sources. However, noticing that there was huge credit of Rs.934.26 Lacs in the bank accounts, Ld. AO rejected the income offered by the assessee. Considering the factual matrix, Ld. AO estimated income of 4% against gross receipts of Rs.934.26 Lacs and allowed depreciation and expenses against the same. Finally, the returned income of Rs.9.99 Lacs was assessed at Rs.17.63 Lacs.

4. Subsequently, upon perusal of case records, Ld. Pr.CIT invoking the provisions of Sec.263, held the order to be erroneous and prejudicial to the interests of revenue. The assessee was show caused wherein it was stated that the income should have been computed by adopting profit rate of 8% of gross receipts. No deduction was to be allowed against the same u/s 30 to 38. Though the assessee opposed the said estimation, Ld. Pr. CIT set aside the assessment order and directed Ld. AO to estimate the income @8% on entire turnover without allowance of any expenses. This was in view of the fact that the assessee did not maintain books of account u/s 44AA and did not get it audited as per Sec.44AB. Aggrieved, the assessee is in further appeal before us.

5. Upon perusal of assessment order, it could be seen that Ld. AO rejected the income offered by the assessee and treated the entire bank credit of Rs.934.26 Lacs as business receipts. The profit element

on turnover was estimated @4% and deduction of expenditure was allowed. It could be seen that the provisions of presumptive rate u/s 44AD would not apply in such a case since the business receipts far exceed the threshold limit of Rs.2 Crores. The Ld. AO, in its own wisdom, made an estimation of the profit and arrived at assessed income of Rs.17.63 Lacs. We are of the opinion that the estimation made by Ld. AO was one of the possible views.

6. The Ld. CIT(A) invoked revisional jurisdiction on the ground that the profit should have been estimated @8% without any allowance of expenditure. This rate is nothing but presumptive rate as prescribed u/s 44AD. However, as noted by us in para-5, this presumptive rate would not apply since the turnover far exceeds the threshold limit of Rs.2 Crores. Alternatively, assuming that Pr. CIT held an independent opinion that the profit rate should have been estimated @8% as reflected by the assessee, we find that the said rate is also without any basis. The estimation remains an estimation. The Ld. AO estimate the rate of 4% which in the opinion of Ld. CIT(A) should have been 8%. In such a case, the revision is nothing but substitution of judgment of Ld. AO. The view of Ld. AO was one of the possible views and the same was not contrary to any law. Therefore, the order could not be held to be erroneous merely on this account. In the result, the prime condition to invoke the revisional jurisdiction u/s 263 remains unsatisfied. Therefore, we quash the impugned order passed by Ld. Pr. CIT u/s 263. We order so.

7. The appeal stands allowed.

Order pronounced on 08th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखकसदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 08-09-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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