

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.2675/Chny/2019
निर्धारण वर्ष/Assessment Year: 2016-17

The Deputy Commissioner of
Income Tax, Circle ,
Trichy.

Vs. Shri Srinivasan Devendran,
No. 25, I.A.S. Nagar,
Trichy 620 013.

[PAN:ABSPD3194P]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Johanson, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing : 14.09.2022
घोषणा की तारीख /Date of Pronouncement : 12.10.2022

आदेश /ORDER

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) 1, Trichy, dated 08.07.2019 relevant to the assessment year 2016-17.

2. The appeal filed by the Revenue is delayed by three days in filing the appeal before the Tribunal, for which, the DCIT Circle 3(1), Trichy has filed a petition for condonation of the delay, to which; the Id.

Counsel for the assessee has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay of three days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Facts are, in brief, that the assessee is a civil contractor who is working for state P.W.D. departments, especially in road construction and is said to be procuring work through tender process in a competitive environment. All the payments are from various state government departments and receipts of assessee are hence available in 26AS and TDS has been deducted by the payer government departments. However, the assessee did not get his accounts audited and has furnished income of ₹.2,30,21,400/- [at 3% on turnover], based on estimates as per practice followed since last many years. However, as the assessee did not maintain accounts and income has been determined only on estimate basis, as has been done in the last few years, and that the assessee should have made and kept accounting records, as required, the Assessing Officer determined income on an estimate at 8% under section 44AD of the Act. As a result of estimation of income from 3.5% to 8% on the ground turnover of ₹.74,53,84,939/-

(i.e., ₹.5,96,30,795), the income of the assessee was assessed at ₹.6,02,90,646 as against returned income of ₹.2,30,21,400/-.

4. On appeal, by considering earlier years, the Id. CIT(A) restricted the net profit margin at 6% with depreciation or 4% without depreciation as against 3% declared by the assessee.

5. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR strongly supported the order passed by the Assessing Officer and submitted that the assessee being a civil contractor and no books are maintained and the presumptive rate of net profit of 8% reflects the legislative approved rate of net profit, which the Id. CIT(A) should have considered as fair and reasonable to estimate income from civil contract business.

6. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A).

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the assessee has justified for adopting 3% of receipts from civil contract as net profit by stating that

his volume of work was more and due to heavy competitions, he could not get more profit in these kind of contract. In support of his contention, before the Assessing Officer, the assessee gave the details of the previous years' assessment completed which are as follows:

S. No.	A.Y.	Total turnover of the assessee	Profit percentage (%) declared by the assessee	Income declared by the assessee	Profit determined u/s. 143(3)
1.	2015-16	41,81,21,750	3%	1,25,43,653	3%
2.	2014-15	22,63,98,010	3%	67,91,940	3.50%
3.	2013-14	14,07,09,573	4%	56,28,383	
4.	2012-13	13,71,29,706	4%	54,85,188	

8. The assessment year under consideration is 2016-17. In the assessment year 2015-16, the assessee has estimated the net profit at 3% and the same was accepted by the Assessing Officer under section 143(3) of the Act. In the assessment year 2014-15, the assessee has estimated the net profit at 3% and the Assessing Officer determined the net profit at 3.50% under section 143(3) of the Act. In the assessment year under consideration, the assessee has declared the net profit at 3% and the Assessing Officer has estimated the net profit at 8%. On appeal, the Id. CIT(A) scale it down to 4% without depreciation. We find that by referring to various case law and after considering earlier assessment years' estimation of the Assessing Officer, the Id. CIT(A) has reduced the net profit to 4%. Thus, we find

no infirmity in the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue is dismissed.

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

Order pronounced on the 12th October, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 12.10.2022

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.