

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3493 & 3494/Chny/2019
निर्धारण वर्ष /Assessment Years: 2013-14 & 2015-16

The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-1,
Chennai.

(अपीलार्थी/**Appellant**)

v. Mr. Rangaraj Anjan Kumar,
New No.10, 9th Street,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-04.
[PAN: AERPA 0064 R]
(प्रत्यर्थी/**Respondent**)

प्रत्यर्थी की ओर से /Department by

: Mr. AR.V.Sreenivasan,
Addl.CIT

अपीलार्थी की ओर से/ Assessee by

: Ms.Sheetal Borkar, Adv.

सुनवाई की तारीख/Date of Hearing

: 06.02.2023

घोषणा की तारीख /Date of Pronouncement

: 28.02.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

These two appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-2, Chennai, both dated 28.10.2019 and pertains to assessment years 2013-14 & 2015-16. Since, the facts are identical and issues are common, for the sake of convenience, these two appeals are being heard together and disposed off, by this consolidated order.

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2. The Revenue has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2015-16, are re-produced as under:

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Ld. CIT(A), has erred in estimating the income of the assessee when the turnover of the assessee is more than 2 Crores.

3. The Ld. CIT(A), has erred in estimating the income @ 5% of the gross receipts when the assessee himself has estimated the income @ 8%?

4. The Id. CIT(A) erred in admitting additional evidence in the form of bills and vouchers which was not presented during the scrutiny proceedings without calling for remand report from AO thereby violating Rule 47A?

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

3. The brief facts of the case are that the assessee is an individual carrying on business of Advertisement Consultancy, Real Estate Agents, etc., under the name and style of 'Cedilla Communications and Catalyst Properties'. The assessee has filed his return of income for the AY 2015-16 on 30.09.2015 admitting total income of Rs.62,74,050/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that there is a difference between the gross turnover reported in the books of accounts when compared to gross-receipts as per Form 26AS. Therefore, called upon the assessee to explain 'as to why' the difference in turnover should not be treated as income of the assessee. In response, the assessee submitted that he has offered turnover in the books of accounts net of all expenses which resulted difference in turnover when compared to gross-receipts as per Form 26AS. The AO, however, was not convinced with the explanation furnished by the assessee and according to

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the AO, the assessee has not maintained proper books of accounts and could not reconcile the difference between turnover as per Form 26AS and gross-receipts declared in the books of accounts. Therefore, difference between gross-receipts as per Form 26AS of Rs.9,22,90,230/- (Rs.12,80,90,144/- - Rs.3,58,00,000/-) has been treated as income of the assessee.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue, which has been reproduced at Para No.4 on Page Nos.3 to 6 of the Ld.CIT(A)'s order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that turnover reported in books of accounts is net of all expenses. The assessee further submitted that it has reconciled difference between the turnover as per Form 26AS and turnover reported in books of accounts. The assessee further contended that if at all receipts as per Form 26AS needs to be considered as business receipts, then, a reasonable profit may be estimated by taken into account total receipts as per Form 26AS. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of order passed by the JCIT u/s.144A of the Income Tax Act, 1961, for the AY 2016-17 observed that the AO in the said case for the AY 2016-17 as per the directions of the JCIT u/s.144A of the Act, has estimated net profit of 5% on the business receipts including gross-receipts as per Form 26AS. Therefore, taken into account the gross profit and net profit declared by

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the assessee for the earlier assessment years, opined that the AO ought to have estimated 3.25% net profit. However, since, the assessee has agreed for 5% net profit on total turnover, the Ld.CIT(A) directed the AO to estimate 5% profit on total receipts as per Form 26AS. The Ld.CIT(A) further directed the AO to determine the income of the assessee on the basis of 5% net profit estimated on total turnover and difference between income offered in the return of income and 5% estimated profit as per directions, should be treated as quantum addition which is liable to be sustained. The relevant findings of the Ld.CIT(A) are as under:

5. Decision:

The detailed submissions of the appellant have been considered. The appellant's grievance is directed at the Assessing Officer's action of bringing to tax the difference between the amount reflected as per Form 26AS amount and amount disclosed in the appellant's Income Tax Return. The sum added was Rs.8,94,26,230/-. I find from the records that in the assessment order copy for Assessment Year 2016-17, which is subsequent to the subject Assessment Year, the Assessing Officer has sought the direction of the Range head the JCIT, Non-Corporate Range-1, Chennai in respect of this matter.

The JCIT vide order dated 24.12.2018 had directed the AO to estimate the income at 5% and the relevant portion of the directions are reproduced as under:

"The submissions of the assessee, the inspector's report and the other materials available in the record were perused. It is noted from the Inspector's report that expenses for the major portion are genuine. The only issue that remains is that the assessee has not produced complete verifiable evidence for the expenses to the tune of Rs.1, 90, 88, 343/-. During the hearing, the assessee claimed that there has been huge expenditure in connection with indirect expenses such as salary to canvassing agents, petrol allowances for procuring advertising orders, salary to establishment staff, rent, electricity, telephone and internet charges and hence requested for estimating his income @ 4% of the gross receipts. Further it is noted that for Assessment Year 2014-15, the assessee's income has been estimated @ 5% of his gross receipts by the assessing officer.

Considering the facts and circumstances of the case, the material evidences available in record and also the nature of the business of the assessee, the assessing officer is directed to estimate the income at 5% of his gross receipts following the precedence of A Y 2014-15."

5.1 In accordance with the directions of the JCIT u/s 144A of the Income Tax Act, Income was estimated at 5% on the business gross receipts of Rs.12,98,65,903/- which worked out to Rs.64,93,295/- and Addition of Rs.43,58,692/- was made on the difference between the estimated amount and the amount already offered by the appellant in the return of income. It is also noted that in Assessment Year 2014-15 a similar addition of 5% of receipts (as per 26AS) was made.

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5.2 Before me in the appellate proceedings for the assessment year under consideration, the appellant placed the details of purchase and sale in respect of the business. The same have been perused. The sample invoices produced were test checked and expenditure details are found to be by and large in order. Since the basic facts for the subject Assessment Year and other Assessment years referred to above i.e. AY 2014-15 and AY 2016-17 are similar, the proposition put up by the appellant that the estimated percentage figure of 5% be adopted for arriving his income, needs due consideration. This is in addition to the income offered by the appellant in his return of income. The fact that appellant is not maintaining proper books is also taken into consideration.

5.3 The weighted average of net profit ratio of the appellant for the Assessment Years. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 is given as per the table below:-

S. No.	Financial Year	AY	Gross Receipts	Gross Profit	Net Profit	GP Ratio	NP Ratio	Weighted Average
1	2007-08	2008-09	5,48,79,251	1,26,06,510	19,89,273	22.97%	3.62%	3.25%
2	2008-09	2009-10	6,37,90,342	72,83,327	21,86,820	11.42%	3.43%	
3	2009-10	2010-11	7,98,07,280	2,27,67,103	22,40,360	28.53%	2.81%	
4	2010-11	2011-12	13,04,15,526	2,03,35,956	52,44,414	15.59%	4.02%	
5	2011-12	2012-13	14,27,79,995	6,95,00,000	58,00,000	48.67%	4.00%	
6	2012-13	2013-14	20,59,58,759	6,30,00,000	60,00,000	30.58%	2.91%	
7	2013-14	2014-15	15,94,07,015	5,60,00,000	48,24,000	35.13%	3.03%	
8	2014-15	2015-16	12,80,90,244	3,58,00,000	28,64,000	27.95%	2.24%	

The weighted average of the 8 years taken together works out to 03.25%. Therefore, logically, AO should have adopted the figure of 03.25% for estimating the appellant's income. However, the appellant was agreeable to a figure of 5% being adopted, which is more than the weighted average worked out above.

5.4 In this case, the Assessing Officer has brought to tax the difference between the amount offered to tax at Rs.3,58,00,000/- and the amount as per the 26AS statement which is Rs.12,80,90,244/-. The Assessing Officer is thereby directed to estimate the income @ 5% of the receipts as per Form 26AS. Thereafter, the difference between the amount offered in the return of income and the 5% estimated as per directions shall be worked out. This amount shall be the quantum of addition which is liable to be sustained. The appeal is disposed off accordingly.

5. The Ld.DR submitted that the Ld.CIT(A) erred in deleting additions made by the AO towards difference in turnover as per Form 26AS and books of accounts of the assessee by admitting additional evidence without giving an opportunity to the AO to verify the evidences filed by the assessee in violation of Rule 46A. The Ld.DR further submitted that the Ld.CIT(A) in Para No.5.2 of their order, directs addition of 5% on suppressed turnover apart from income returned and which, works out to Rs.46,14,510/- **plus** Rs.62,74,050/- in total Rs.1,08,85,560/-. But, in Para No.5.4 of their order, the Ld.CIT(A) says that income has to be taken at 5% of gross turnover

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which works out to Rs.64,04,510/-. Thus, there is a contradiction in the findings of the Ld.CIT(A). Similar findings are given for assessment year 2013-14 also. Therefore, he submitted that the issue may be set aside to the file of the AO to re-examine the case of the assessee.

6. The Ld.Counsel for the assessee, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee has explained difference in turnover as per Form 26AS and turnover reported in books of accounts. The assessee has explained reasons for estimating 5% net profit on gross total turnover and such request is based on the directions of the JCIT in 144A order for the AY 2016-17, where a similar direction has been given to the AO to estimate 5% profit on gross-receipts. The Ld.Counsel for the assessee further submitted that the Department has estimated 5% net profit in earlier assessment years too. The Ld.CIT(A) after considering relevant facts has rightly estimated 5% profit on total turnover including difference in turnover as per Form 26AS and books of accounts of the assessee and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that there is a difference between turnover as per books of accounts of the assessee reported in ITR filed for relevant to AY and gross-receipts as per Form 26AS in the Income Tax Database. The assessee has reported gross turnover of Rs.3,58,00,000/-, whereas, the receipts as per Form 26AS was at Rs.12,80,90,144/-. Although, the

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assessee claims to have reconciled difference between turnover as per books of accounts and gross-receipts as per Form 26AS, but on perusal of details filed by the assessee, we find that the assessee could not satisfactorily explained difference in turnover with necessary evidences. Further, the books of accounts maintained by the assessee are not proper which can be verified with necessary evidences. Under those facts, the Ld.CIT(A) came to the conclusion that estimation of profit on total turnover as per Form 26AS, is only a solution to resolve the dispute between the assessee and the AO. Therefore, the Ld.CIT(A) rejected the books of accounts of the assessee and estimated net profit of 5% on gross turnover reported as per Form 26AS in the Income Tax Database. The Ld.CIT(A) while adopting 5% net profit has analyzed previous financial results of the assessee right from AYs 2008-09 to 2013-14 and observed that the average net profit declared by the assessee for all those years works out to 3.25%. If you consider average net profit declared by the assessee for earlier assessment years with income determined by the AO by adding difference in turnover as per Form 26AS, the net profit percentage determined by the AO for the impugned assessment year is exorbitant, which gives distorted figures. Therefore, she has made a fair estimation of 5% net profit by taking into account net profit estimated by the AO for earlier assessment years and also the directions of the JCIT's order u/s.144A of the Act, for the AY 2016-17. In our considered view, the method followed by the Ld.CIT(A) to determine income of the assessee is appears to be reasonable

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and thus, we are of the considered view that there is no reason to interfere with findings given by the Ld.CIT(A) to estimate 5% net profit on gross-receipts as per Form 26AS. Thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue for the AY 2015-16.

8. In the result, appeal filed by the Revenue in ITA No.3494/Chny/2019 for the AY 2015-16 is dismissed.

ITA No.3493/Chny/2019 for the AY 2013-14:

9. The facts involved in this assessment order are identical to the facts and issues which we had considered in ITA No.3494/Chny/2019 for the AY 2015-16, except to the extent of change in facts on account of addition towards cash deposits found in the bank account of the assessee. The reasons given by us in the preceding paragraphs in ITA No.3494/Chny/2019, shall ***mutatis mutandis***, apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Ld.CIT(A) in estimating 5% net profit on gross-receipts as per Form 26AS.

10. As regards estimation of profit on cash deposits found in the bank account of the assessee in addition to difference in gross-receipts, the AO has made addition towards cash deposits in bank account to the extent of Rs.2,54,40,084/- as income of the assessee u/s.69A of the Act. According to the AO, the assessee could not explain source for cash deposits found in the bank account. The AO further noticed that the assessee claims that

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source for cash deposits is out of rental advances and other receipts from customers, whereas, the so-called rental receipts do not appear in the books of accounts maintained by the assessee. Therefore, the AO was of the opinion that the assessee could not explain source for cash deposits and thus, treated cash deposits as unexplained income of the assessee.

11. It was the explanation of the assessee that he had withdrawal of Rs.4,65,82,107/-, while the cash deposits in bank account was at Rs.2,54,40,084/- and in view of the same, the assessee claims that source for cash deposits is out of withdrawal from the same bank account. The assessee further claims that he had received cash from various customers toward rent of stall in exhibitions and advance from customers and receipts against bills and the same has been deposited in bank account. Therefore, further additions towards cash deposits u/s.69A of the Act, amounts to double addition when the AO has considered total receipts for the purpose of estimation of income.

12. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has withdrawal of Rs.4.65 Crs. and deposited of Rs.2.54 Crs. in his bank account. Ideally, it can be safely concluded that source for cash deposits can be out of withdrawals from the same bank account in earlier occasions. Be that as it may, but facts remain that the assessee has explained source for cash deposits and as per explanation of the assessee, he has received cash from various

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customers towards payment for fabrication of exhibition stalls, road shows and printing of flex boards, rental advances and rent received for flex boards, etc. We find that for the AY 2013-14, gross-receipts of the assessee as per Form 26AS was at Rs.20.52 Crs. The assessee has considered gross turnover of Rs.13.68 Crs. in his books of accounts. Thus, there is a difference of Rs.6.81 Crs. in turnover when compared to gross-receipts as per Form 26AS and gross turnover admitted in the books of accounts. The AO has made addition towards difference in gross turnover as no business income of the assessee. Ideally, when the AO has treated gross-receipts as per Form 26AS as business turnover of the assessee, then addition made towards differential turnover as business income of the assessee, will take care of cash deposits found in the bank account of the assessee. If you telescopic, addition made towards business income to cash deposits, in our considered view, further addition towards cash deposits u/s.69A of the Act, appears to be double addition on very same income. However, facts remain that the Ld.CIT(A) had considered even cash deposits as turnover of the assessee for the purpose of estimation of business income, on the ground, books of accounts maintained by the assessee are not susceptible for verification. Therefore, she has considered total receipts as per Form 26AS, including cash deposits found in the bank account of the assessee and estimated net profit of 5% on total receipts. In our considered view, the Ld.CIT(A) has taken a reasonable view taking into account overall facts and circumstances of the case and has estimated

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net profit of 5% which is further strengthened by the fact that in earlier assessment years, the AO himself has estimated 5% net profit on total turnover on the basis of directions of the JCIT's order passed u/s.144A of the Act for the AY 2016-17. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to estimate net profit at 5% on total turnover, including cash deposits found in the bank account of the assessee and thus, we reject the ground taken by the Revenue.

13. In the result, appeal filed by the Revenue in ITA No.3493/Chny/2019 for the AY 2013-14 is dismissed.

14. In the result, appeals filed by the Revenue in ITA Nos.3493 & 3494/Chny/2019 for the AYs 2013-14 & 2015-16 are dismissed.

Order pronounced on the 28th day of February, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2023.

TLN

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF