

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH, CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**  
**AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **280/Chny/2021**

निर्धारण वर्ष / Assessment Year: 2012-13

M.S. Raja,  
280, Brough Road,  
Erode – 638 001

**[PAN: AEVPR-1501-E]**

(अपीलार्थी/Appellant)

ITO,  
v. Ward 1(2),  
Erode.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate (Erode)

प्रत्यर्थी की ओर से/Respondent by

: Shri. Suresh Guduri, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.10.2023

घोषणा की तारीख/Date of Pronouncement

: 11.10.2023

**आदेश / O R D E R**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.07.2021 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

*"1) The order of the learned CIT-(A) is bad in law, non-considerate of relevant factors and against the settled law.*

2) *The learned CIT-(A) did not consider the written submissions filed during the course of hearing properly. [Copy is enclosed]*

3) *The learned CIT-(A) failed to consider that the very reason for re-opening the case of the appellant is not the satisfaction of the Assessing Officer but a borrowed one.*

4) *The learned CIT-(A)'s observation that the decisions cited by the appellant do not apply to the facts of the case is blunt, baseless and without any justification.*

5) *The order of the CIT-(A) is wrong in so far as it failed to appreciate that when the reason for reopening is to "VERIFY the sources for CASH DEPOSITS into Savings Account", the same is against the scheme of reassessment, thereby making the entire proceedings null and void.*

6) *The order of the CIT-(A) is erroneous in so far as it failed to appreciate that when the reason for reopening is to "verify the sources for CASH DEPOSITS into Savings Account" and when the addition was an estimated percent made on the TOT AL CREDITS in the Savings and Current Accounts, the reason for reopening ceased to exist.*

*And, for other grounds of appeal (factual or legal) that may be raised before or at the time of hearing, the appellant prays that the present appeal be admitted, the submissions be considered and justice be rendered."*

3. The brief facts of the case are that, the appellant did not file his return of income for the assessment year 2012-13, u/s. 139(1)/ 139(4) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The assessment has been reopened u/s. 147 of the Act, for the reasons recorded as per which income chargeable to tax has been escaped assessment on

account of cash deposits to bank to the tune of Rs. 37,58,600/- and accordingly, notice u/s. 148 of the Act dated 14.03.2019, was issued and served on the assessee. The assessee neither filed his return of income in response to 148 notice, nor appeared before the Assessing Officer. Therefore, the Assessing Officer has left with no option, has completed assessment u/s. 144 r.w.s. 147 of the Act, on 22.11.2019 and determined total income of Rs. 11,85,065/-. The Assessing Officer, while assessing the income has considered total cash deposits into City Union Bank, Erode, amounting to Rs. 1,97,51,089/- and estimated 6% income on total cash deposits and made additions of Rs. 11,85,065/-. The appellant carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), for the reasons stated in their appellate order dated 30.07.2021, sustained additions made by the Assessing Officer towards estimation of profit @ 6% on total cash deposits. Being aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submitted that the assessee is in the business of commission agent. The total

cash deposits found in his bank account is business receipts. The assessee earns 2% to 3% commission income on total business. The Assessing Officer has made additions of 6% on total cash deposits and not allowed any expenditure towards earning income. Therefore, he submitted that a reasonable amount of profit may be estimated, because the profit percentage considered by the Assessing Officer is on higher side.

5. The Id. Sr. AR, Shri. Suresh Guduri, JCIT, on the other hand, supporting the order of the Assessing Officer and CIT(A) submitted that the assessee is a non-filer. Even for earlier assessment years, the assessment has been completed and 6% profit has been estimated on total receipts. In the impugned assessment year, the Assessing Officer has adopted 6% profit on total cash receipts. Therefore, there is no reason to give further relief to the assessee and thus, the order of the Id. CIT(A) should be upheld.

6. We have heard both the parties, perused 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 neither filed his return of income nor filed any details to justify source for cash deposits found in his bank account. In absence of any evidence, the Assessing Officer left with no choice, has estimated 6% commission income on total cash deposits. It was the argument of the assessee before us that the assessee being a commission agent, earns 2% to 3% commission income on his total business and out of which, the assessee incurs certain expenditure for day-to-day maintenance of business. Therefore, the profit estimated by the Assessing Officer @ 6% is on higher side. We find that, although the Assessing Officer has adopted 6% rate for estimating commission income, but has not given any reason or comparable cases of similar nature to justify rate of profit adopted for estimation of income. At the same time, although the assessee claims to have earns 2% to 3% commission income on total income, but no evidence has been filed. In absence of necessary details, it is difficult for us to accept the version of the Assessing Officer as well as the assessee. Under these facts and circumstances, the only option left with us is to settle dispute between the assessee and the Assessing Officer by estimation of reasonable profit from total receipts found in his bank account. Since, the assessee claims that he

earns 2% to 3% commission income on total business, in our considered view, 3% would be reasonable and fair and thus, we direct the Assessing Officer to estimate 3% income on total cash deposits found in his bank account.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 11<sup>th</sup> October, 2023 at Chennai.

**Sd/-**

(मनोमोहन दास)

**(MANOMOHAN DAS)**

**न्यायिक सदस्य/Judicial Member**

**Sd/-**

(मंजुनाथ. जी)

**(MANJUNATHA. G)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 11<sup>th</sup> October, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF