

आयकर अपीलिय अधिकरण, 'बी (SMC)' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B(SMC)' BENCH, CHENNAI

श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1582/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2014-15

Income Tax Officer,
Corporate Ward 2(3),
Chennai.

Ibhar Technologies Private
v. Limited,
R60, 14th Street, 4th Main Road,
Anna Nagar,
Tamil nadu – 600 040.

[PAN: AABCI-1883-R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Hema Bhupal, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. T. V. Muthu Abirami, Advocate

सुनवाई की तारीख/Date of Hearing

: 27.02.2024

घोषणा की तारीख/Date of Pronouncement

: 27.02.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 26.09.2023 and pertains to assessment year 2014-15.

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

"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 concluding that the appeal has been filed in time merely based on assessee's statement that the assessment order dated: 21.02.2022 was received only on 25.11.2022, whereas it is found that the same is against the facts available on record.

3. The Ld.CIT(A) has failed to appreciate that the assessee has merely filed the computation of total income and financial statements and claiming them to be additional evidence which the Ld.CIT(A) ought not to have admitted.

4. The Ld.CIT(A) has erred in deciding the case in favor of the assessee without even waiting for the additional details sought to be filed by the assessee thus rendering the decision of the Ld. CIT(A) perverse and thus not acceptable.

5. The Ld.CIT(A) erred in not conveying to the Department with regard to request of the assessee to approach the Hon'ble HC for seeking more time for submission of supporting documentary evidences and such documentary evidences would require time and effort and the assessee has submitted that if the Department wishes to seek more time for completion of the proceedings, the appellant would not object to the same.

6. The Ld.CIT(A) failed to appreciate that in absence of return of income and any response during the assessment proceedings the Assessing Officer was left with no other option than to complete the assessment proceedings on best judgment on a presumptive basis.

7. The Ld. CIT(A) ought to have upheld the additions made on presumptive basis considering the merits of the case rather than deleting the additions on flimsy technical grounds like mentioning of sections whether only to compute the income of the appellant or for imposing the liability under the said sections.

8. 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, as per information available with the Department in ITBA module, the assessee has received contract payments of Rs. 13,06,808/- and fees for professional/technical services to the tune of Rs. 53,81,628/-, during the financial year 2013-14 relevant to assessment year 2014-15. The assessee did not file its return of income and therefore, the assessment has been reopened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). During the course of assessment proceedings, various notices were issued to the assessee, but no response. Therefore, the Assessing Officer on the basis of information with the Department estimated 8% profit as per provisions of section 44AD on contract receipts and fees for professional and technical services and determined total income of Rs. 27,45,360/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has filed certain additional evidences. The Id. CIT(A), forwarded additional evidences to the Assessing Officer for his verification. The Assessing Officer vide his remand report dated 24.09.2023, has commented on

additional evidences and observed that, there is no change in facts, even after additional evidences submitted by the assessee. Therefore, the Id. CIT(A) by taking into account relevant facts including presumptive taxation rate adopted by the Assessing Officer as per section 44AD and 44ADA of the Act, deleted additions made by the Assessing Officer towards estimation of profit on the ground that the Assessing Officer has wrongly applied provisions of section 44AD and 44ADA of the Act, even though said provisions are clearly not applicable to companies. The Id. CIT(A), had also discussed the issue on merits and observed that the assessee has filed necessary evidences to prove expenditure like travelling conveyance and rent, and thus, the financial statements filed by the assessee declaring loss appears to be correct and thus, there is no reason for the Assessing Officer to make additions on estimation basis. Aggrieved by the Id. CIT(A) order, the revenue is in appeal before us.

5. The Id. DR, submitted that the Id. CIT(A) deleted additions made by the Assessing Officer towards estimated net profit on total contracts receipts without appreciating fact that, the assessee has not filed its return of income declaring any

income. Therefore, he submitted that the order of the Id. CIT(A) should be reversed.

6. The Id. AR, on the other hand supporting the order of the Id. CIT(A) submitted that, the Assessing Officer has applied wrong provisions of section 44AD and 44ADA of the Act, even though said provisions are not applicable to companies. Further, the Id. CIT(A) has also discussed the issue on merits and deleted additions made by the Assessing Officer. Therefore, she submitted that the order of the Id. CIT(A) should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is a non-filer and not filed its return of income for the assessment year 2014-15, although it has gross receipts from its business, which is in excess of threshold limit for filing return of income. The Assessing Officer estimated 8% profit on total receipts in terms of section 44AD of the Act. The Id. CIT(A), deleted additions made by the Assessing Officer towards estimated profit by considering provisions of section 44AD & 44ADA of the Act, on

the ground that said provisions does not apply to the companies. The Id. CIT(A), had also discussed the issue on merits and observed that when the assessee has declared loss for the impugned assessment year, there is no reason for the Assessing Officer to estimate profit and made additions. In our considered view, the reasons given by the Id. CIT(A) to delete additions towards estimated profit on total receipts appears to be reasonable and acceptable. The revenue could not controvert factual findings recorded by the Id. CIT(A). Therefore, we are of the considered view that there is no error in the reasons given by the Id. CIT(A) to delete additions made towards estimated profit on gross receipts and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 27th February, 2024 at Chennai.

Sd/-

(मंजूनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th February, 2024

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