

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "SMC", HYDERABAD**

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No. 390/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2016-17)

Sai Kiran Sanukam, Vs. Income Tax Officer,  
Hyderabad Ward-15(1),  
[PAN No. BADPS7289F] Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri V. Venkata Rao, AR  
राजस्व द्वारा/Revenue by: Ms. Aditi Goyal, DR

सुनवाई की तारीख/Date of hearing: 16/05/2024  
घोषणा की तारीख/Pronouncement on: 22/05/2024

**आदेश / ORDER**

Aggrieved by the order dated 23/02/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sai Kiran Sanukam ("the assessee") for the assessment year 2016-17, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual. He did not file the return of income for the assessment year 2016-17. Learned Assessing Officer, however, noticed that the assessee received commission/brokerage income to the tune of Rs. 41,73,788/- during the financial year 2015-16. Learned Assessing Officer, therefore, issued notices under section 142(1) of the Act on 17/11/2021. Assessee filed the return of income on 26/03/2022 showing a turnover of Rs. 41,73,788/-. Learned Assessing Officer stated that the assessee filed return of income

beyond thirty days from the date of notice under section 148 of the Act and treated the return as nonest and proceeded to add the entire commission income of the assessee.

3. Aggrieved, assessee preferred appeal before the learned CIT(A), and pleaded that the commission was received from L&T Housing Finance, Piramal Capital and Housing etc. These commissions were claimed as gross commission against which substantial expenses of salary amounting to Rs. 18,65,300/-, advertising and promotion of Rs. 4,41,300/-, rent of Rs. 3,65,400/- etc., have been claimed. Learned CIT(A), however, refused to accept the expenses claimed by the assessee, stating that the assessee claimed the said expenses, without submitting any evidence regarding such expenditure before the learned Assessing Officer/NFAC. But, at the time of giving the findings, it was observed by the learned CIT(A) that certain expenses would have definitely be incurred by the assessee for earning income and on a conservative estimate basis, 10% of the income was considered as expenditure. Challenging this finding of the learned CIT(A), assessee preferred this appeal before the Tribunal.

4. Learned AR submitted that under section 44AD of the Income Tax Act, 1961 (for short "the Act"), in the case of the eligible assessee, a sum equivalent to 8% of the total turnover or gross receipts of the assessee in the previous year shall be deemed to the profit and gains of such business and in the case on hand, the net profit at 27% which is far higher than the profit in the line of advertisement business and, therefore, treating 90% as net profit is unconscionable. Learned AR further submitted that without accepting 27% of the net profit, learned Assessing Officer treated the net profit at 100% of the total receipts whereas the learned CIT(A) treated 90% of the total receipts as 'net profit'.

5. Per contra, learned DR supported the orders of the Revenue authorities, stating that the assessee failed to file the return of income

within thirty days as allowed by the learned Assessing Officer and, therefore, the learned Assessing Officer was right in treating the return of income as nonest and proceeding to complete the assessment under section 144 of the Act, according to his best judgment. She supported the impugned order, stating that the learned CIT(A) had taken a practical view while allowing 10% of the total receipts as expenditure.

6. I have gone through the record in the light of the submissions made on either side. In the assessment order itself, the learned Assessing Officer recorded that the assessee filed the return of income on 26/03/2022 to the notice issued by the learned Assessing Officer on 25/03/2022, granting final opportunity to the assessee. When the learned Assessing Officer thought it fit to allow the final opportunity by way of notice dated 25/03/2022 and the assessee filed the return of income on 26/03/2022, treating the same as nonest is incorrect, otherwise, there was no point in learned Assessing Officer, issuing a notice on 25/03/2022 which would otherwise be only an empty formality.

7. Learned AR submitted that in the line of advertisement business on commission, the profits cannot be 90% or 100% and even according to the provisions under section 44AD of the Act, the same could be at 8%. Learned CIT(A) agreed that to earn income, the assessee must necessarily incur some expenditure and the expenditure claimed by the assessee as noted in paragraph No. 5.2 of the impugned order was not accepted by the learned CIT(A).

8. Learned AR submitted that even after the expenditure claimed by the assessee as noted by the learned CIT(A) in the impugned order, it leaves the net profit at 27%, which is far higher than the deemed income under section 44AD of the Act or in the line of business of the assessee.

9. Considering all these aspects in totality, I am of the view that the learned Assessing Officer should have considered the return of income filed by the assessee and learned CIT(A) should have considered the probability of the expenditure claimed to have been incurred by the assessee, which leaves the net profit at 27%. Hence, the learned Assessing Officer is directed to verify the expenditure as claimed by the assessee and noted by the learned CIT(A) at paragraph NO. 5.2 of the impugned order and in case the net profit offered by the assessee is more than 25%, to accept the same. Ground is allowed accordingly.

10. In the result, appeal of the assessee is allowed accordingly.

Order pronounced in the open court on this the 22<sup>nd</sup> day of May, 2024.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 22/05/2024

TNMM

Copy forwarded to:

1. Sai Kiran Sanukam, Flat A-4M, A Block, II Floor, Venkateswara Apartments, Safilguda, Hyderabad.
2. Income Tax Officer, Ward-15(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD