

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकरअपील सं./ ITA No.578/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)**

The Income Tax Officer,
Ward-1,
Karur.

Vs. M/s. Sivakarithikeyan Transport,
23, Pasupathipuram,
Karur 639 001.
[PAN: ABLFS 8576P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. N. Arjun Raj, Advocate
: Shri. S.Easwar, IRS, JCTI.

सुनवाई की तारीख/Date of Hearing

: 21.05.2024

घोषणा की तारीख /Date of Pronouncement

: 29.05.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 15.12.2023 in the matter of assessment order framed by the Assessing officer (In short 'AO) u/s 144 of the Act on 24-10-2019.

2. Brief facts are that the appellant is a partnership firm and did not file its return of income for the AY 2013-14 despite receiving the contract receipt of Rs.2,15,62,457/- as per form 26AS. Accordingly, the case was reopened under section 147 of the Income Tax Act, 1961 (In short 'the Act') and noticed under section 148 of the Act was issued to the appellant however, despite notice under section 148 appellant did not find any return of income. During the course of assessment proceedings assessee filed submissions and stated that its status was changed from firm to AOP and it had surrendered the original PAN of the firm, whereupon the AO brought to tax net profit of Rs.17,24,997/- at the rate of 8% of gross receipts.

3. During the appellate proceedings, the appellant filed written submissions, copy of dissolution deed of the firm and ITR of the AOP. On receipt of additional documentary evidences Ld.CIT(A) forwarded these additional evidences to AO with directions to furnish the remand report. After receiving the remand report from the AO, the contention of the appellant has been accepted by Ld.CIT(A) and directed the AO to delete the addition on estimate basis. In this regard, we would like to refer the para 5.2 of Ld.CIT(A) order as under:

"5.2. During the appellate proceedings, the appellant contended same as that during the assessment proceedings. The appellant firm further claimed that the turnover reflected in the firm's 26AS was duly disclosed in the return of income filed in the status of AOP (PAN-AAIAS3396N). In support of its contention, the appellant furnished the written submissions, copy of dissolution deed of the firm and ITR of AOP. Since these were the additional documentary evidences, the same were forwarded to the AO with direction to furnish the remand report. Accordingly the AO verified the documentary evidences and submitted the remand report. The relevant portion of the remand report is reproduced here as under:-

Comments of the AO:-

The assessee had filed the dissolution deed of the firm dated 31.03.2011. In the deed it has been clearly stated that the deed witnesses that the parties have mutually agreed to close the business carried in the firm from 31.03.2011 and the parties have decided to change the status to AOP w.e.f 01.04.2011. The assets and liabilities have been taken over to the AOP status and the partners of the AOP are not getting salary and capital interest payments from firm's business income.

In the return filed by the assessee in AOP status for the AY 2013-14, the sale of services in Profit and Loss account is Rs.5,52,00,000/- which is in higher end of Rs.2,15,62,457/-. Thus it is inferred that the assessee has shown the entire gross receipts available in TDS Traces of the firm status.

The remand report is submitted.

The remand report of the AO is self-explanatory. The AO noted that the appellant filed the return of income in the status of AOP (PAN-AAIAS3396N) by declaring the receipts of Rs.5,52,00,000/- which is far higher than the receipts of Rs.2,15,62,457/- reflected in the Form 26AS of the appellant firm. Thus the appellant had disclosed the receipts reflected in its Form 26AS and profit raised thereon in the return of income filed. Therefore making addition of Rs.17,24,997/- on account of net profit of 8% of receipts of Rs.2,15,62,457/- would cause double taxation of the same income; once in the status of AOP & once in the status of firm.

In view of the facts & remand report submitted by the AO, the contention of the appellant firm is accepted and the AO is directed to delete the addition of Rs.17,24,997/- on estimated basis. Accordingly, Ground No. 1 & 2 are allowed”.

4 Aggrieved, the assessee is in further appeal before us. During hearing Ld.Counsel for assessee relied upon para 5.2 of the order of CIT(A). The Ld. Sr. DR has pleaded for dismissal of the appeal based upon AO order.

5. We have heard the rival submissions and perused the materials available on record. We have observed that Ld.CIT(A) in its para 5.2 has accepted the contention of the appellant in view of the remand report submitted by AO. We do not find any flaws in the impugned order of Ld.CIT(A), therefore, we

endorse the view of Ld.CIT(A). Hence, impugned order dated 15.12.2023 is upheld.

6. In result, appeal of the revenue is dismissed.

Order pronounced in open court on 29th day of May, 2024

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 29-05-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF