

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
**BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**  
आयकर अपील सं./ITA Nos.1335/Chny/2023 & ITA Nos.1338/Chny/2023  
निर्धारण वर्ष /Assessment Years: 2018-19 & AY-2019-20

**Shri Chenniappan Ramadurai,**  
**No.56, NMS Compound, Erode,**  
**Tamil Nadu-638001.**  
**[PAN: AELPR2706M]**

**Dy. Commissioner of Income Tax,**  
**Central Circle-2, Coimbatore.**

**And**  
**ITA Nos.1341/Chny/2023 for AY 2019-20**

**Smt. Ramadurai Amutha,**  
**No.56, NMS Compound, Erode,**  
**Tamil Nadu-638001.**  
**[PAN: AFVPA4816L]**

**Dy. Commissioner of Income Tax,**  
**Central Circle-2, Coimbatore.**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.S.Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri ARV Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 30.05.2024

घोषणा की तारीख /Date of Pronouncement

: 12.06.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

In its opening arguments, the Ld.AR of the appellant informed that ITA Nos.1335/Chny/2023 & ITA Nos.1338/Chny/2023 for Assessment Years 2018-19 & AY-2019-20 respectively and ITA Nos.1341/Chny/2023 for AY 2019-20 are having common issues and disputes and therefore as requested the impugned appeals are adjudicated together.

**ITA Nos.1335/Chny/2023**

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/M/250/2023-24/1056406590(1) dated 22.09.2023 of Ld.CIT(A) 19, Chennai. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 22.09.2023 passed by Ld.CIT(A) 19, Chennai.

2.0 It is seen from records that there is delay of 01 day in filing of this appeal. The assessee has submitted that it was on account of delay in handing over papers to the authorized representatives. Evidences brought on record allude that there is sufficient force in the assessee's arguments. It is trite law that no appellant gains by delaying its petition for redressal of its grievances. The delay in filing the appeal is therefore condoned and the appeal is being adjudicated as under.

3.0 Aggrieved by the aforesaid order dated 22.09.2023, the assessee has raised grounds of appeal 1 to 5.

4.0 At the outset the Ld.AR informed that it is withdrawing ground of appeal no.3. Accordingly, the ground of appeal no.3 is dismissed as withdrawn. Further the LD.AR informed that it would not like to press ground of appeal no. 4 for further adjudication. Accordingly, the ground of appeal no.4 is dismissed as not pressed.

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5.0 Ground of appeal no.1 & 2 are general in nature and hence bereft of any adjudication.

6.0 Ground of appeal no.5 is regarding non-adoption of net profit for estimation of undisclosed sales of the assessee. Brief facts of the case are that a Survey u/s 133A of the Act was conducted upon the assessee, engaged in the business of whole sale and retail trading of textiles, on 28.06.2020. Consequent to the survey incriminating documents indicating suppression of sales was found. The case of the assessee was reopened u/s 147 r.w.s 148 of the Act. The assessing officer considering undisclosed sales turnover of Rs.2,09,25,334/- proceeded to make additions to the returned income. During the course of survey, the assessee had admitted an addition and offered for tax an amount of Rs.15,27,447/-, being average gross profit rate of 7.3% on the hitherto undisclosed turnover of Rs.2,09,25,334/-. The AO made an addition of Rs.835769 recording following observation in Para-3 of Page-2 of his impugned order:-

*“...3.0 During the course of Survey conducted U/s 133A in the premises of assessee, it was observed that the assessee's sales register which was maintained manually to record the sale transactions for the FY 2017-18 that the sales turnover amounting to*

*:- 4 -:*

*Rs.2,09,25,334/-has not been reflected in his regular books o. accounts maintained for the corresponding FY. As per the sales register assessee's total turnover for the F.Y 2017-18 is at Rs,5.40,24.489/-. However, his regular books of accounts showed only a sum of Rs.3,30,99,155/- as turnover, Upon verification of the Assessee's regular books of account, it was noticed that the sales turnover has not been fully accounted for. The unaccounted sales turnover as detected during the survey was put forth to assessee for explanation in the statement recorded and the assessee accepted that the turnover totaling to Rs.2,69,25.334/- was not accounted for in his regular books of accounts and admitted to include in the turnover for A.Y 2018-19 and admit Rs.15,27, 457/- being the average gross profit(7.3%) on the difference in turnover of Rs.2,09,25,334/ as his total income for the A.Y 2018-19 and file the revised return accordingly. In the return of income filed in response to the notice U/s 148 of the Act, the assessee has admitted an amount of Rs.14,25, 108/- as profit and gains from business income as against Rs.7,33,327/- returned U/s 139(4). However, in the statement of oath recorded during the course of survey, the assessee has agreed to admit a sum of Rs,15,27,550/- as his additional business income. Hence, an amount of*

*Rs.8,35,769/- being the difference in the income admitted of Rs.22,60,877(Rs15,27, 550/-+ 733327) and the business income returned in response to notice U/s 148 is added to the total income of the assessee...”*

7.0 Before the Ld.CIT(A) the assessee contested that the AO ought to have adopted net profit rate for estimating its undisclosed taxable income as against GP rate of 7.3%. The assessee rested its arguments on the premise of unaccounted sales having a component of some expenses imbedded therein. The Ld.CIT(A) observed that there is nothing on record to suggest of accounted expenses taking place in assessee's business. Accordingly relying upon the decision of ITAT, Gauhati in ITA No.111/GTY/2020 dated 20.02.2023 and Hon'ble Gujarat High Court in tax appeal No. 527 and 528 of 15, the Ld.CIT(A) rejected assessee's contentions and confirmed the order of the assessing officer.

8.0 The Ld.AR vehemently argued in favour of adoption of net profit ratio over the undisclosed sales turnover by repeating argument of some expenses of unaccounted nature being taking place to earn unaccounted turnover.

9.0 The Ld.DR placed reliance upon the order of the Assessing Officer and Ld.CIT(A). It was stated that no evidence of any unaccounted

expenses has been noted during the survey and hence adoption of GP ratio has been rightly done.

10.0 We have heard rival submission in the light of facts of the case and material brought on records. Incurring of some expenses is germane to every business activity as there cannot be any accrual of receipts unless some expenses have been incurred. Therefore, the argument of the assessee that some expenses have been incurred for making the undisclosed turnover cannot be summarily dismissed merely for want of non-discovery of any such expenses found during the survey proceedings. The question which however comes is that of quantifying such expenses. The problem is acute in view of the fact that there is no material on record. Accordingly, we are of the view that the ends of justice would be met if GP of 5% is applied on the impugned undisclosed sales turnover as against GP of 7.3% adopted by the AO. Accordingly, the AO is directed to recalculate his addition by adopting GP of 5% on the impugned undisclosed sales turnover of Rs.2,09,25,334/-. The ground of appeal no.5 is therefore partly allowed.

11.0 In the result the appeal is partly allowed for statistical purposes.

**ITA Nos.1338/Chny/2023 For Assessment Years A.Y-2019-20 in the case Shri Chenniappan Ramadurai, [PAN: AELPR2706M] and ITA Nos.1341/Chny/2023 for AY 2019-20 in the case of Smt. Ramadurai Amutha, [PAN: AFVPA4816L]**

12.0 As discussed above, the facts of case in the above mentioned appeals were reported by the Ld.AR to be identical to the one in ITA

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Nos.1335/Chny/2023 For Assessment Years A.Y-2018-19 in the case Shri Chenniappan Ramadurai, PAN AELPR2706M save that there was no ground in ITA No.1338 & ITA No.1341 qua any controversy of section 148. Accordingly, the decision taken therein follows in the above mentioned appeals as well.

13.0 In the result the appeal for impugned ITA Nos.1338 & 1341(Supra) are also partly allowed for statistical purposes.

*Order pronounced on 12<sup>th</sup> June, 2024 at Chennai.*

**Sd/-**

(यस यस विश्वनेत्र रवि)

**(SS Viswanethra Ravi)**

न्यायिक सदस्य / **Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 12<sup>th</sup> June, 2024.

KB/-

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

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

**Sd/-**

(श्री अमिताभ शुक्ला)

**(Amitabh Shukla)**

लेखा सदस्य /**Accountant Member**