

**IN THE INCOME TAX APPELLATE TRIBUNAL “K (SMC)” BENCH,
MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA No. 2018/Mum/2024
(Assessment Year: 2007-08)

ITA No. 2022/Mum/2024
(Assessment Year: 2006-07)

Anil Tilakraj Mehra
204, Madhu Industrial
Premises,
Old Nagardas Road,
Andheri (E),
Mumbai-400 069

Vs.

Income Tax Officer,
Piramal Chambers,
Lalbaug, Parel
Mumbai-400 012

(Appellant)

(Respondent)

PAN No. AAHPM1904A

Assessee by : Shri Om kandalkar, AR
Revenue by : Shri Rajneesh Yadav, DR

Date of hearing: 22.07.2024
Date of pronouncement : 24.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 2022/Mum/2024, for A.Y. 2006-07 and ITA No. 2018/Mum/2024, for A.Y. 2007-08, is filed by Mr. Tilakraj Mehra (assessee / appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 21st February, 2024, dismissing the

appeal of the assessee filed against the assessment order under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 19th March, 2014, passed by the Income Tax Officer, ward 20(1)(1), Mumbai (the learned Assessing Officer), was dismissed.

02. The assessee is aggrieved with the same and has preferred this appeal raising following grounds of appeal in ITA No. 2022/Mum/2024 for A.Y. 2006-07:-

"1) On the facts and in the circumstances of the case and in law, the learned A.Q. erred in not disposing off appeal except to 2 grounds relating to reopening and estimate of income u/s. 44AD.

ii) On the facts and in the circumstances of the case and in law, the learned A.O. erred in reopening the assessment U/s. 147 of the Income Tax Act, 1961, and the learned CIT(A) erred in confirming the reopening of the assessment by the A.O. on the ground that the income for the Assessment Year 2006-2007 should have been estimated U/s. 44AD of the Income Tax Act, 1961, by relying on the assessment order for Assessment Year 2009-2010,

iii) On the facts and in the circumstances of the case and in law, the learned CIT(A) did not appreciate the fact that no officer of the Department can travel beyond the provisions contained in the Income Tax Act, 1961, by ignoring section 44AD sub section 6 explanation (b)(ii) where eligible business is defined. The total turnover for the year under appeal is much

beyond the limit of Rs. 40 Lakhs prescribed u/s. 44AD and therefore, the assessment itself by application of section 44AD is bad in law and, therefore, requires to be annulled.

iv) On the facts and in the circumstances of the case and in law, the mistake committed in any Assessment Year cannot become base for reopening of the assessment as each assessment year is an independent assessment year and, therefore, on this ground only the order passed by the learned A.O. should be quashed. On the ground that the assessment could not have been reopened on mere change of opinion.

v) The learned A.O. and the learned C.I.T.(A) do not have power to travel beyond the provisions contained in the Income Tax Law in respect of section 44AD. Therefore, the assessment order passed by the learned A.O. requires to be quashed, on the ground that the learned AO's action in reopening the assessment is ultra virus of the Income Tax Law.

vi) On the facts and in the circumstances of the case and in law, without considering the fact that the appellant has challenged the application of section 44AD, as applicant's turnover for the year under consideration was Rs.6,04,04,573/- which is 15 times higher than the limit of turnover prescribed u/s. 44AD. It is further submitted that the AO, ignored the Tax Audit Report in Form No. 3CD and 3CB duly

certified by the C.A. M/s. S.A. More and Co., without discussing the issue involved in this appeal.

vii) On the facts and in the circumstances of the case and in law, the issue of notice u/s. 143(2), of the Act is mandatory when the order is passed u/s. 143(3). This submission of the appellant has not been discussed or dealt with by the CIT(A) while discussing the appeal.

viii) On the facts and in the circumstances of the case and in law, the learned A.O. did not issue the notice u/s. 143(2) of the I.T. Act 1961, during the course of assessment proceedings and the learned C.I.T.(A) had ignored this fact while passing the appellate order and, therefore, on this ground itself the assessment order requires to be quashed.

ix) On the facts and in the circumstances of the case and in law, learned A.O. as well as the learned C.I.T.(A) ignored the submissions made during the course of assessment vide letters dated 25.02.2016, 17.12.2021 and 23.01.2024 submitted to the CIT(A). The appellate order is passed without considering the submission.

x) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in relying the assessment order & appellate Order for the Assessment years 2001-2002 to 2003-2004 as the facts of these assessments years are totally different from the facts of the current assessment year.

xi) All the above grounds are without prejudice to each other.

xii) The appellant craves leave to add, alter, amend or delete any ground(s) of appeal either before or during the course of hearing of the appeal."

03. Brief facts of the case for AY 2006-07 shows that assessee is an individual who filed his return of income on 31st October, 2006, at a total income of ₹11,19,445/-. The return was processed under Section 143(1) of the Act. Subsequently, notice under Section 148 of the Act was issued on 15th March, 2013, for the reason that during the assessment proceedings for A.Y. 2009-10, that assessee has not maintained the books of account and assessment was completed under Section 44AD of the Act estimating the net profit of the assessee being 8% of gross receipt. Further, in earlier years also the assessment of the assessee has been made by estimating the income at the rate of 8% of the gross receipt. It was noted that for A.Y. 2009-10, the gross receipt of the assessee is ₹7,28,78,932/- and therefore, it has resulted into an underassessment of income. Assessee responded to notice under Section 148 of the Act by letter dated 7th May, 2013, stating that the return filed on 31st October, 2006, may be treated as return of income in compliance to the above notice. The assessee was supplied the reasons of reopening. The assessee raised objection on 18th February,

2014, which was disposed off on 24th February, 2014. On the merits assessee submitted that for A.Y. 2009-10, without understanding the impact of the provisions of Section 44AD of the Act assessee has agreed to be taxed on the estimate income at the rate of 8% but for this year, he submitted that his business income is not more than 2% of the total turnover and therefore, this income may be estimated accordingly. The learned Assessing Officer asked the assessee to produce the books of account but assessee did not appear and Authorized Representative of the assessee who was unable to produce the books of account. The learned Assessing Officer noted that during the year gross receipt of the assessee is ₹6,04,04,573/- and 8% estimated profit on the gross receipt is ₹48,32,366/-. Out of which the assessee has already offered income of ₹11,19,445/- and therefore, balance addition of ₹37,12,921/-, was added to the total income of the assessee and the assessee's income was computed at ₹48,32,366/- by an assessment order passed under Section 143(3) read with section 147 of the Act on 19th March, 2014.

04. The assessee preferred the appeal before the learned Commissioner of Income-tax (Appeals). Assessee submitted that he is a proprietor of M/s Tirupati constructions. He submits that assessee has a turnover of ₹6,04,04,573/- and has also filed his tax audit report under Section 44AB of the Act and therefore, determination of the profit at the rate of 8% is incorrect.

He further submitted that though in A.Y. 2009-10, he might have unwillingly agreed for income at the rate of 8% of the gross receipt but same is not the case for this year. He also demonstrated that his net profit is in the range of 0.6% to 1.85% for last 8 years. Accordingly, the assessment order passed by the learned Assessing Officer consequent addition made is not correct. Regarding non-production of books of account, he submitted non-production of books of account cannot lead to a conclusion that assessee has not maintained books of account. He submitted that assessee was unable to produce the books of account as same were not traceable in view of the change in the accountant and the change in the Chartered Accountant. The learned CIT (A) confirmed the reopening of the assessment and also upheld the addition at the rate of 8% of the gross profit in absence of the books of account. The appellate order was passed on 21st February, 2024, dismissing the appeal of the assessee. The assessee is aggrieved with the same and is in appeal before us.

05. The learned Authorized Representative submitted that in assessee's own case, the identical issue is decided by the co-ordinate Bench in ITA Nos.2011, 2013, 2014 and 2015/Mum/2024, for four earlier different assessment years, wherein the issue is restored to the file of the learned Assessing Officer with a direction to the assessee for submission of the books of account before the learned Assessing Officer and therefore, identically if assessee is

granted one more opportunity, assessee would substantiate the same by producing the books of account.

06. The learned Departmental Representative stated that assessee has been given enough opportunities before the learned lower authorities but has not produce the books of account and therefore giving one more opportunity is incorrect.
07. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. In assessee's own case for A.Y. 2008-09 to A.Y. 2011-12, the co-ordinate Bench vide order dated 12th July, 2024, vide paragraph no.7 has given one more opportunity to the assessee for submitting the books of account before the learned Assessing Officer and no view on the merits of the case are expressed. As the A.Y. 2006-07, is on identical facts, for this year also we restore the issue back to the file of the learned Assessing Officer with a direction to the assessee to substantiate his book results by producing the books of accounts and audit report.
08. ITA No. 2018/Mum/2024 for A.Y. 2007-08, is also on similar facts where the learned CIT (A) confirmed the action of the learned Assessing Officer of estimating the income of the assessee under Section 44AD of the Act. For the similar reasons given by us for A.Y. 2006-07, we also restore the appeal of the assessee for A.Y. 2007-08 to the file of the learned Assessing Officer with similar direction to the assessee.



09. Accordingly, appeal for A.Y. 2006-07 and 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on 24.07.2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 24.07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai