

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.890, 891, 892 & 893/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2014-15, 2015-16, 2016-17 & 2017-18

Karuppannan Thulasimani,  
23C, Ganapathy Nagar,  
Mariyamman Kovil Street,  
Periyasemur, Erode-638004.  
[PAN: ADMPT 5801H]

The Income Tax Officer ,  
**Vs.** Ward-1(1),  
Erode.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

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

: Shri S. Sridhar, Advocate (Erode)  
: Shri R.Clement Ramesh Kumar, CIT &  
Shri ARV Srinivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2024

घोषणा की तारीख /Date of Pronouncement

: 31.07.2024

आदेश / **ORDER**

**PER JAGADISH, A.M :**

Aforesaid four appeals filed by the assessee for Assessment Years (AYs) 2014-15 to 2017-18 arises out of identical orders passed by the Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 23.02.2024.

2. The facts in all the appeals of the assessee are identical and common grounds have been raised in all these four appeals; we proceed to pass common order.

**For A.Ys 2014-15, 2015-16 & 2017-18:**

3. The facts are identical for A.Ys. 2014-15, 2015-16 & 2017-18 except the sum of receipt on which income of 8% has been estimated. The facts for A.Y 2014-2015 are taken for adjudication for the sake of brevity.

4. The A.O on the basis of information that it has a contract receipts of Rs. 5,13,96,081/-, but has not filed return of income has reopened the assessment by issuing notice u/s. 148 of the Act , after recording the reason. The assessee in response to notice u/s. 148 of the Act has filed return of income, declaring total income of Rs.10,46,770/-. The assessee before the A.O has submitted that he does not maintain books of accounts and return of income has been filled estimating income @ 1.5 % of Rs. 6,97,84,399/- being the sum credited in the bank account. However, the A.O passed order u/s. 144/147 of the Act estimating the income @ 8% of contract receipts to the tune of Rs. 5,13,96,081/- available in Form 26 AS. The A.O in assessment order further noted as under:

*"It is settled law that there is certain degree of guess work in best judgment assessment as held by Hon'ble Madhya Pradesh High Court in the case of Ganga Prasad Sharma vs. CIT 127 ITR 27 (MP). Therefore, considering the nature of work, surrounding facts of the case as well as on the basis of materials available on record, I apply a fair and reasonable net income ratio @8%, on total contract receipts of Rs. 5,13,96,081 taking into account comparative net income in contract works. Therefore, the net, income for considered as 8% of*

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*total contractual Receipts which comes to Rs.41,11,686/- which is hereby considered as the total income for the year under consideration resulting an addition of Rs. 30,64,916/- (Rs.41.11.686/- - Rs, 10,46,770/-)."*

5. On appeal, the Ld. CIT(A) called for remand report from the A.O, who reiterated that the A.O has rightly assessed the income @ 8% on presumptive basis. The A.O further stated that as the assessee himself has disclosed gross contract receipts of Rs. 6,97,84,399/- as against Rs. 5,13,96,081/- taken by A.O in the assessment order, the Ld CIT(A) should enhance the income by taking @ 8% of Rs. 6,97,84,399/- as income. The Ld. CIT(A) has confirmed the addition made by A.O as per order passed u/s 144/147.

6. Now, before us the assessee has filed appeals challenging the reopening of assessment and the quantum of addition made by A.O. and confirmed by the Ld CIT(A). The Ld. AR, after arguing the case on merit , did not press the ground of reopening.

7. The Ld. AR has submitted that the assessee does not maintain the books of accounts and has filed return of income in response to notice u/s. 148 of the Act on the basis of 1.5% of amount credited in the bank account. As per the Ld AR , the rate of 1.5% has been taken as per the normal profit in the line of business of bleaching . The Ld.

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AR has contended that the AO has chosen the rate of 8% arbitrarily without considering any comparables and the nature of business of bleaching. The Ld. AR further submitted that there is comparable case of in the case of M/s. Annai Textile Bleachers – PAN – AAPFA3104J, where income has been accepted by the Department as per the following details at around 3.5% as under and the same may be adopted for estimation:

<i>Assessment years</i>	<i>Gross Receipts (Rs.)</i>	<i>Net Profit (%)</i>
2014-15	3,60,65,421/-	3.36
2015-16	3,33,58,747/-	3.33
2016-17	3,09,65,453/-	3.31
2017-18	3,41,76,802/-	3.61

8. The Ld. DR has supported the orders of lower authorities and prayed to confirm the addition.

9. We have heard the rival contentions, and perused the materials available on record. Admittedly, the assessee does not maintain any books of accounts and has filed return of income @ 1.5% gross turnover. The A.O has taken 8% of the contract receipts estimated @ 8% of gross receipts citing the case of *Ganga Prasad Sharma Vs. CIT 127 ITR 27 (MP)* that there is a certain degree of guess work in best judgment assessment and he has taken income @ 8% of contractual

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receipt taking into contract works. The Ld. AR has submitted that the assessee is not in civil contract business and section 44AD of the Act is not applicable as turnover of the assessee is more than 4 Crores. The Ld.AR has also submitted that in similar line of business, the profit margin is 3.5%. We have gone through the assessment order, CIT(A) order, and comparable cases. Considering the turnover and the nature of business, in our opinion 5% of turnover will be reasonable estimate for estimating the income of assessee . The Hon'ble Madras High Court in the case of *K.Kannan vs. Assistant Commissioner of Income-tax, Circle-I in Tax Case (Appeal) Nos. 679 & 680 of 2013 in M.P. Nos.1 of 2013 and 1 & 2 of 2013 dated 01.10.2013*, on similar facts has upheld the estimation at 5% of contract receipt as under :

*“As to the merits of the case herein is concerned, as already seen, the Commissioner of Income Tax (Appeals) considered the case of the assessee as regards the profit margin in the earlier years to refix the income at 5% of the gross turnover. Consequently, we do not find any justification in the Tribunal straightaway restoring the assessment at 8% of the gross turnover without any discussion on the merits of the Commissioner of Income Tax (Appeals) order. In the circumstances, after going through the order of the Commissioner of Income Tax (Appeals), we have no hesitation in restoring the order of the Commissioner of Income Tax (Appeals) and thereby set aside the order of the Tribunal.*

*11. Consequently, while partly allowing the appeals filed by the assessee, the Order of the Income Tax Appellate Tribunal is set aside and the order of the Commissioner of Income Tax (Appeals) is restored in fixing the income of the assessee at 5% on the gross turnover. ”*

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10. In view of the above, the A.O is accordingly directed to estimate the income @ 5% of the turnover as under:

<b>Assessment Years</b>	<b>Credits in the bank account</b>
2014-15	Rs. 6,97,87,399/-
2015-16	Rs. 9,00,21,597/-
2017-18	Rs. 11,32,21,776/-

### **Assessment Year 2016-17:**

11. The A.O on identical facts has made the addition on contract receipts of Rs. 9,57,51,597/- u/s. 69C of the Act . The A.O in the A.Y 2016-17 has reopened the assessment by recording the reason that the assessee has paid to contractor of Rs. 9,57,51,597/- and has not filled the return of income .The Assessee in response to notice u/s 148 has filled return of income showing total income at Rs 15,75,550/ by estimating profit @1.5% of sum credited in bank account like other assessment years. However , The A O in the assessment order has made the addition of Rs 9,57,51,597 u/s. 69C of the Act. The Ld. CIT(A) has confirmed the addition.

12. The Ld. AR and the Ld. DR both agreed that the facts of A.Y 2016-17 are identical to the facts of A.Y 2014-15 , 2015-16 and 2017-18. However, the A.O has taken a different stand of treating the receipt as payment and making entire payment as unexplained

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expenditure u/s 69C of the Act. The Ld. AR has contended that the income for A.Y 2016-17 should also have been estimated in the line of income estimated in other years. We agree with the submission made by the Ld AR, and therefore, facts being identical direct AO to estimate the income for AY 2016-17 @ 5% of Rs. 10,50,36,588/- in the line of income to be estimated for A.Y 2014-15, 2015-16 and 2017-18.

13. In the result, the appeals filed by the assessee are partly allowed.

*Order pronounced on 31<sup>st</sup> July, 2024.*

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY. T. Varkey)**

**न्यायिक सदस्य / Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 31<sup>st</sup> July, 2024.

EDN/-

**Sd/-**  
**(जगदीश)**  
**(Jagadish)**

**लेखा सदस्य / Accountant Member**

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

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