

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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 Nos.1575, 1576, 1577 & 1578/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2013-14, 2013-14,2015-16
& 2015-2016)**

Palavesakannu Palani,
28, Ram Nagar,
Thiyagaraja Nagar,
Palamkottai, Tirunelveli 627 002.

Vs. The Income Tax Officer,
Ward 1,
Tirunelveli.

[PAN: AWVPP 9442L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri Kathir, Advocate
: Ms Kavitha, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 26.08.2024

घोषणा की तारीख /Date of Pronouncement

: 28.08.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

The aforesaid appeals by the assessee for captioned assessment years arises out of separate orders of even date 01.05.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi ('CIT (A) in short'). The appeals in ITA No.1575 & 1577/Chny/2024 are quantum appeals for assessment years 2013-14 and 2015-2016 whereas appeals in ITA No.1576 & 1578/Chny/2024 are penalty appeals for assessment years 2013-14 and 2015-2016.

1.2 First, we will take up quantum appeal in ITA No.1575/Chny/2024 for assessment year 2013-14 for adjudication wherein an assessment was framed by Id. Ld. Assessing Officer u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (in short 'the Act'). The assessee has filed the following grounds of appeal which reads as under:-

"1. The order of the CIT(A) is erroneous and bad in law as the same is contrary to the facts of the case and provisions of the law.

2. The CIT(A) failed to see that the assessment order was passed without providing the appellant a reasonable opportunity to be heard.

MERITS:

3. The CIT(A) erred in upholding the computation of income at 8% of the purchase value of broiler chickens, and thereby arbitrarily enhancing the total demand payable.

4. The CIT(A) failed to see that the AO in similar reopening cases for other AYs:2011-12, 2012-13 and 2014-15; computed the income at Rs.0.50/- per kg of broiler chicken purchased for the respective assessment years, but denied when the same was prayed by the appellant for the present AY:2013-14.

5. The CIT(A) ought to have seen that the assessment order does not contain the reason for opting a different method of estimation of income from that of the previous assessments.

6. The CIT(A) erred in computing the income of the appellant, without considering the expenditure and losses incurred by the appellant during the course of business, and the nature of business.

7. Any other ground that may be raised at the time of the hearing".

1.3 The Id. Authorized Representative arguments only qua grounds taken on merits of the addition. The Id. AR filed charts and case law compilations on 'consistency' and a paper book pertaining to lower proceedings. The Id.Addl CIT – Departmental Representative submitted that impugned order is a reasonable order which do not require any further interference on our part. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

2. Brief facts of the case are that the assessee is an individual and is involved in the wholesale broiler chicken business. The AO received information from the DDIT (INV), Unit-1(4), Pune regarding the assessee's purchase of cull birds from M/s Venkateshwara Hatcheries Pvt. Ltd. during the financial year 2011-12. This information prima facie become the basis of reasons to believe that the appellant has suppressed turnover thereby leading to escapement of total income taxable under the Act for the AY 2013-14. Accordingly, the AO recorded his reasons u/s 147, obtained necessary approvals from the competent authority and issued notice u/s 148 dated 25.03.2020. In response to the Notice u/s 148 of the Act, the assessee has filed the return of income for the AY 2013-14 on 30.11.2020 admitting gross total income of Rs.3,03,791/- During the course of reassessment proceedings, in response to the query u/s 133(6) by the AO, the supplier M/s Venkateshwara Hatcheries Pvt Ltd., Pune furnished the ledger copies of the assessee for the period from 01.04.2011 to 31.03.2017 (FY 2011-12 to FY 2016-17 e.g. AY 2012-13 to AY 2017- 18). Upon perusal of the ledger for the period 01/04/2012 to 31/03/2013, it was found that the assessee had purchased cull birds amounting to Rs.3,70,25,571/-, However, the turnover shown in the return of income filed on 27.05.2013 for the AY 2013-14 was only Rs. 37,65,895/- The assessee submitted before the AO, an estimation of income at a rate of 0.50 paise per kg of chicken purchased. This estimation was based on previous assessments conducted by the Assessing Officer, where the net profit from the wholesale business of trading in broiler chicken was determined at the same rate. However, the provided evidence and supporting documentation were insufficient to substantiate this estimation. The

AO examined the purchase details and found that the assessee had purchased cull birds to the tune of Rs. 3,70,25,571/-, In the absence of proper sales details and the failure to maintain books of accounts, the estimation of income at 0.50 paise per kg was deemed unreliable. The AO made estimation of income at 8% of the purchase value of Rs. 3,70,25,571/-which worked out to Rs.29,52,529/-. The assessee was given an opportunity to submit objections or explanations to the draft assessment of income, but no response was received within the stipulated time frame, Finally, assessment was completed under section 143(3) r.w.s.147 of the Act on 28.12.2018 at total income of Rs. 29,52,529/-, Based on the findings during the course of re-assessment proceedings, the AO initiated penalty proceedings u/s 271A for the failure to maintain books of accounts and penalty proceedings u/s 271(1)(c) for furnishing inaccurate particulars of income. Aggrieved with the enhanced assessment, the appellant has filed an appeal before the Id. CIT(A).

3. On further appeal, the Id. CIT(A) held as under:-

'On perusal of the assessment order, it transpires that the AO has considered these grievances raised before him. The appellant did submit before the AO that he purchased 6,07,582.100 Kg of broiler chicken. The profit 0.50 per Kg will work out to Rs. 3,03,791/-. There is no dispute that the appellant made total purchase of Rs. 3,70,25,571/-. The profit percentage on the purchase works out to 0.82% (= profit/turnover in %i.e. 3,03,781/3,70,25,571) which is ridiculously low. No business man would do business by involving considerable capital say 20% of the purchases (Rs. 74,05114) to earn a paltry sum of Rs. 3,03,791/- or 0.82%. It is true that the authorities cannot dictate as to how the assessee has to conduct his business, but the financials which he has submitted in the ITR must be logical and reliable. The principle of res judicata (a thing or matter that has been judicially decided on its merits and cannot be litigated again between the same parties) does not apply to income tax proceedings. It was incumbent upon the assessee to come up clean before AO and substantiate his averment to the satisfaction of the AC on the basis of facts and figures relating to his business. Besides the above, the AO granted him opportunity to produce the books or the calculations to substantiate that he is earning only 0.82% in this business. The appellant has failed to prove this not only

before the AO but also during the appellate proceedings. With these observations, the grounds cannot be sustained. They are therefore dismissed”.

Aggrieved, assessee preferred an appeal before us.

4. Ld.Counsel for the assessee before us filed charts profit per kg of chicken purchased.

Profit chart for the impugned years
Assessment year 2013-2014.

<i>No.</i>	<i>Particulars</i>	<i>Value</i>
<i>1</i>	<i>Total purchase value</i>	<i>Rs.3,69,06,607/-</i>
<i>2</i>	<i>Kgms of chicken purchased</i>	<i>6,07,582.100 kgs</i>
<i>3</i>	<i>Cost per Kg of chicken purchased</i>	<i>Rs.60.74</i>
<i>4</i>	<i>Profit @0.50 per kg of chicken purchased</i>	<i>Rs.3,03,791/-</i>

Assessment year 2015-2016.

<i>No.</i>	<i>Particulars</i>	<i>Value</i>
<i>1</i>	<i>Total purchase value</i>	<i>Rs.3,31,07,327/-</i>
<i>2</i>	<i>Kgms of chicken purchased</i>	<i>5,39,762.700 kgs</i>
<i>3</i>	<i>Cost per Kg of chicken purchased</i>	<i>Rs.61.3</i>
<i>4</i>	<i>Profit @0.75 per kg of chicken purchased</i>	<i>Rs.4,04,822/-</i>

Profit chart for the subsequent years.

<i>A.Y</i>	<i>Kgms of Chicken purchased</i>	<i>Net Profit</i>	<i>Profit per kg admitted by the appellant</i>
<i>2016-17</i>	<i>5,09,707.800</i>	<i>5,11,814</i>	<i>1.00</i>
<i>2017-18</i>	<i>4,86,479.600</i>	<i>4,97,420</i>	<i>1.02</i>
<i>2018-19</i>	<i>2,38,636.00</i>	<i>5,28,790</i>	<i>2.22</i>
<i>2019-20</i>	<i>2,54,426.00</i>	<i>4,79,422</i>	<i>1.88</i>
<i>2020-21</i>	<i>2,51,398.800</i>	<i>4,64,796</i>	<i>1.85</i>
<i>2021-22</i>	<i>2,50,724.800</i>	<i>4,97,400</i>	<i>1.98</i>
<i>2022-23</i>	<i>2,71,978.00</i>	<i>4,87,566</i>	<i>1.79</i>
<i>2023-24</i>	<i>2,54,284.300</i>	<i>4,54,978</i>	<i>1.79</i>

The Id. AR took us to the assessment orders for the assessment years 2011-12, 2012-13 and 2014-2015 which were completed u/s.143(3) r.w.s. 147 of the Act.

The relevant portion of Id. Assessing Officer's order for assessment year 2011-2012 is reproduced as under:-

"With a view to adopt a correct selling price of the chicken, a letter to the Deputy Director of statistics was issued calling for price details for the financial year 2010-11. In response to this office letter, the Deputy Director (Statistics) vide his letter dated 12/12/2018 submitted chicken live medium retail price on various dates during the financial year 2010-11 which is annexed along with this report.

A proposal for completion of assessment dated 18/12/2018 was sent to the assessee arriving 8% profit on the selling price u/s 44AD as the assessee has not maintained any books of accounts during the financial year 2010-11. Comparison of this price along with the price quoted by the Deputy Director (Statistics), contravenes and leads to the inference that there is a logic on the part of the assessee in arriving at wholesale selling price. In response to this proposal, the assessee vide his reply dated 21/12/2018 has submitted a detailed reply explaining the nature of business, direct & indirect expenses details, how the retail price is fixed, how could they fix their wholesale selling price amidst cut throat competition in the field, etc. He has also submitted a chart wherein datewise retail shop selling price of chicken published in the newspaper during the financial year 2010-11. He has arrived gross margin around Rs.3/- per kg and net profit around Rs.0.50/- per kg. To verify the submissions of the assessee in regard to arriving at the net profit, the Inspector was deputed to visit the shop and submit a report. The Inspector vide his report dated 26/12/2018 has explained in detail how this business is going on and the expected margin. He has reported the retail selling price and wholesale selling price published in the daily newspaper "Dinamalar" dated 26/12/2018. Moreover, the submission of the Inspector also correlates with the submission of the assessee.

Keeping the above all in view, it is estimated that the net profit in this business would be Rs.0.50/- per kg which amounts to Rs.4,16,725/- (8,33,450 x 0.50). Hence, this income of Rs.4,16,725/- is added to the total income of the assessee".

The aforesaid assessment orders have been accepted by the assessee.

5. Per contra, Id. Departmental Representative supported the orders of the lower authorities and prayed for dismissing the appeal.

6. We have heard the rival submission, perused the orders of lower authorities, paper books and citations referred. We find substance in the submissions of the assessee that a reasonable estimate may be taken seeing the past and subsequent years profits of the assessee. It is true that doctrine of res judicata does not apply to income tax proceedings but rule of consistency should be maintained for the finality of the controversy, otherwise it will lead to nowhere. In the following cases rule of consistency has been recognized and followed:-

01. *Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC)*

02. *CIT vs. Neo Poly Pck (P) Ltd (2000)245 ITR 492 (Delhi)*

We, therefore following rule of consistency, direct the Id. Assessing Officer to take profit of Rs.0.50 per kg for assessment year 2011-12 and Rs.0.75 per kg for assessment year 2014-2015 as both assessment years are prior to assessment year 2015-2016. Therefore, the Id. Assessing Officer will re-compute the income keeping in mind the consequential relief, if any as prayed in the grounds of appeal.

7. Appeals of the assessee in ITA Nos.1575 & 1577/Chny/2024 for assessment years 2013-14 and 2015-2016 are partly allowed for statistical purpose.

8. Now, we take up penalty appeals in ITA Nos.1576 & 1578/Chny/2024 for assessment years 2013-14 and 2015-2016 for adjudication:-

Consequent upon the quantum order (referred supra), penalty proceedings were initiated against the assessee in the assessment order. The assessee defended the same by submitting that the additions were estimated addition

without reference to regularly maintained books of accounts. We also find that both the authorities below estimated the income. In our considered opinion, additions which are mere estimated additions do not attract penalty u/s.271 (1) (c) of the Act and it is not a fit case of levy of penalty. The decision of the Co-ordinate Bench of the Chennai Tribunal in the case of Sri Saibaba Guest House vs. ITO (ITA No.2784/Chny/2018, dated 04.08.2021) wherein the penalty on similar factual matrix, has been cancelled. Accordingly, we delete the impugned penalty in both assessment years i.e 2013-14 and 2015-2016 and allow the appeals of the assessee in ITA Nos.1576 & 1578/Chny/2024.

9. To summarize the results, the appeals of the assessee in ITA Nos.1575 & 1577/Chny/2024 for assessment years 2013-14 and 2015-2016 are partly allowed for statistical purpose whereas ITA Nos.1576 & 1578/Chny/2024 for assessment years 2013-14 and 2015-2016 stand allowed.

Order pronounced in the open court on 28th day of August, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated :28-08-2024

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER