

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
Before Shri S.S. Viswanethra Ravi, Judicial Member &  
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. No.1822/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2010-11

Palanisamy Navaladi,  
102A, Kanganipatti, Parali Post,  
Namakkal 637 020.

Vs. The Income Tax Officer,  
Ward - 2,  
Namakkal.

[PAN: AGDPN3363J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri H. Yeshwanth Kumar, C.A.  
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT  
सुनवाई की तारीख/ Date of hearing : 01.10.2024  
घोषणा की तारीख /Date of Pronouncement : 09.10.2024

**आदेश / O R D E R**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order dated 30.04.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2010-11.

2. Ground Nos. 1 & 2 are general in nature and requires no adjudication.

3. Ground Nos. 3 & 4 raised by the assessee in challenging the action of the Id. CIT(A) in restricting the addition made under section 69A of the Income Tax Act, 1961 ["Act" in short] in the facts and circumstances of the case.

4. At the outset, we note that the Assessing Officer on an AIR information found the assessee made cash deposit in his savings bank account with Kotak Mahindra Bank, Namakkal. Having no return of income filed, the Assessing Officer issued notice under section 148 of the Act on 31.03.2017. According to the Assessing Officer, there was no response by the assessee in filing the return of income or details in respect of cash deposits. The Assessing Officer proceeded to complete assessment proceedings in the absence of assessee and added entire cash credit of ₹.26,90,210/- to the total income of the assessee vide his order dated 28.11.2018 under section 144 r.w.s. 147 of the Act.

5. As the assessee aggrieved by the order of the Assessing Officer, filed an appeal before the Id. CIT(A). It was contended that there was no sufficient time to make compliance with AO's notice. Further, it was submitted that the last opportunity to file objection was on or before

20.11.2018 and the assessment order was passed on 28.11.2019. Further, it was also brought to the notice of the Id. CIT(A) that the reasons for non-filing of return of income and details regarding cash deposits as found in assessee's savings bank account. Further, we note that the assessee filed additional evidences before the Id. CIT(A) regarding return of income and details of the cash deposits as found in the bank account. The Id. CIT(A) sought remand report from the Assessing Officer. The relevant portion of the remand report is reproduced in para 6.2 of the impugned order. On perusal of the remand report as well as additional evidences and with reference to the finding of the Id. CIT(A), we note that the assessee has filed return of income declaring a total income of ₹.3,20,060/-. It was stated that the assessee was a tiles laying contractor and declared salary income, business income, dairy income, bank interest and agricultural income for the period under consideration. The assessee applied section 44AD of the Act on business income. Relevant portion is reproduced in para 6.1 of the impugned order. Further, the Assessing Officer, under remand proceedings, held that the assessee could not produce evidence like labour bill, etc, to an extent of ₹.20,23,250/- against total tiles laying contract receipts of ₹.31,69,719/- and no evidence was

submitted towards ₹.11,46,469/- [31,69,719 – 20,23,250]. The Id. CIT(A) considering the same, restricted the addition to an extent of ₹.11,46,469/-.

6. Before us, the Id. AR Shri H. Yeshwanth Kumar, C.A. submits that the assessee was appointed as Lab Technician in the Department of Tamilnadu Public Health Subordinate Services in August, 2009, relevant to the assessment year 2010-11, thereby, the assessee offered profit of business receipts as found in the way of cash deposits in the two bank account by applying 10% under section 44AD of the Act. The extent of addition confirmed by the Id. CIT(A) was also a part of business receipt prior to the appointment of assessee in Govt. Job. The Assessing Officer erred in saying that the assessee could not produce any evidence towards the addition confirmed by the Id. CIT(A). The Id. AR vehemently argued that the assessee was a contractor and all cash deposits found in the two bank accounts were business receipts arising out of contractual activities. The assessee has no other business activity other than tiles laying contract. He argued that the assessee offered 2% more than the prescribed rate as contemplated under section 44AD of the Act. Further, he submits that the AY being

old, prayed to consider the case of the assessee under the provisions of section 44AD of the Act.

7. The Id. DR Ms. Gouthami Manivasagam, JCIT, vehemently argued that the assessee did not file his return of income even in response to the notice under section 148 of the Act and no evidence was produced before the Assessing Officer in support of the cash deposits as found in the bank accounts. The assessee failed to produce any evidence in respect of the addition confirmed by the Id. CIT(A). The Id. DR supported the order of the Id. CIT(A).

8. Having discussed the facts and circumstances of the case along with reasons recorded by the Id. CIT(A) in the impugned order as well as the Assessing Officer in the remand report, we note that the assessee was a contractor prior to his appointment in Govt. Job as a lab technician. The assessee offered reasons for non-appearance before the Id. CIT(A) and filed return of income by showing income, such as, salary income, business income from tiles laying contract and agricultural income. The assessee, particularly, adopted 10% of net profit under section 44AD of the Act in respect of the business receipt as stated to have been deposited in his two bank accounts. The

Assessing Officer held in the remand report that the assessee could not show copy of the labour bills to an extent of ₹.20,23,250/- and for the remaining amount, he held that there is no evidence. Admittedly, the assessee was a contractor before his appointment and there is no dispute in this regard by the Revenue. The dispute is only with regard to non-submission of any evidence with regard to the extent of addition as confirmed by the Id. CIT(A). We note that the provision under section 44AD of the Act provides for computing profits and gains of business on presumptive basis in case of an eligible assessee engaged in an eligible business a sum equal to 8% of the total turnover or gross receipts of the assessee or a sum higher than 8% shall be deemed to be profits and gains of such business. Admittedly, there was no dispute the business of the assessee falls under the category of an eligible business attracting provisions of section 44AD of the Act. Further, we note that there was no evidence brought on record by the Assessing Officer in the remand proceedings showing the sum of ₹.11,46,469/- is not arising from business and further, we find the Assessing Officer has not disputed the business activity of the assessee. In the absence of any evidence contrary to the submissions of the assessee, we hold the assessee's business is an

eligible business attracting the provisions of section 44AD of the Act and the cash deposits as found in two bank accounts of the assessee are out of business. Thus, 10% of profit under section 44AD of the Act offered by the assessee is accepted. Thus, the order of the Id. CIT(A) fails and it is not justified. Therefore, the grounds raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 09<sup>th</sup> October, 2024 at Chennai.

Sd/-  
(AMITABH SHUKLA)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Chennai, Dated, 09.10.2024

Vm/-

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.