

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1917/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2018-19

Shri Govinda Samy Thanigaivel,
No.41/13, Mukkarambakkam,
Gummidipoondi,
Chennai – 601 102.

The Income Tax Officer,
Vs. Ward-1,
Tiruvallur.

PAN: AOSPT 8158A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 2118/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2018-19

The Income Tax Officer,
Ward-1,
Tiruvallur.

**Shri Govinda Samy
Thanigaivel,**
Vs. No.41/13, Mukkarambakkam,
Gummidipoondi,
Chennai – 601 102.

PAN: AOSPT 8158A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by
राजस्व की ओर से /Revenue by

: Shri R. Venkata Raman, CA
: Shri Shiva Srinivas, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 18.11.2024

घोषणा की तारीख/Date of Pronouncement : 18.11.2024

आदेश / O R D E R

PER BENCH:

These cross appeals is directed against the CIT(A)'s order dated 17.05.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. Brief facts of the case are as follows:

The assessee is an individual. He is having a wholesale business of food products under the name and style of M/s. Pooja enterprises. For the assessment year 2018-19, assessment was completed u/s.147 r.w.s. 144 of the Act vide order dated 01.03.2023. In the said assessment order, addition was made with reference to cash deposits made by the assessee amounting to Rs.2,78,45,600/- u/s.69A r.w.s. 115BBE of the Act.

3. Aggrieved, assessee filed appeal before the First Appellate Authority. Before the FAA, the assessee filed fresh evidence in the form of GST return and GST assessment. The CIT(A) without calling for a remand report held that assessee's cash deposits are out of his business of running dealership of food products. The CIT(A) concluded that the income need to be assessed only at 8% of the gross receipts of Rs.2,90,07,437/-. Thereby making addition of Rs.23,20,595/- u/s.69A of the Act.

4. Aggrieved by the CIT(A)'s order, the assessee has filed an appeal (ITA No.1917/CHNY/2024) by challenging the estimation made at 8% of the gross sales. The Revenue being aggrieved, has also filed an appeal before ITAT in ITA No.2118/CHNY/2024. In Revenue's appeal, the primary ground is with reference to the admission of additional evidence by the CIT(A) in violation of provision of Rule 46A of the Income Tax Rules, 1962.

5. The Id.AR candidly admits that assessee before CIT(A) has filed additional evidence and there has been violation of Rule 46A of the Income Tax Rules. However, he submits that estimation made by the CIT(A) at 8% of the gross sales is on the higher side. The Id.AR has placed on record the profit ratio for the assessment years 2015-16, 2016-17 and 2017-18. It was submitted by the Id.AR, for assessment years 2016-17 & 2017-18, books of accounts were audited u/s.44AB of the Act and the net profit ratio was only 3.77% for AY 2016-17 and 2.88% for AY 2017-18. It was further prayed by the Id.AR, if the case is to be remanded, the same may be remanded to the AO. The Id.DR was duly heard.

6. We have heard rival submissions and perused the material on record. The assessment in this case has been completed on best

judgment basis u/s.147 r.w.s. 144 of the Act, since there was non-appearance on the part of the assessee before the AO. Before the FAA, the assessee had filed additional evidences. The CIT(A) without calling for a remand report had made an estimation of income at 8% of the gross receipts. The admission of additional evidence without calling for a remand report is in violation of provision of Rule 46A of the Income Tax Rules, 1962. In light of the violation of provision of Rule 46A, we deem it appropriate to restore the matter to the files of the AO, since he did not have an occasion to examine / verify the additional evidence that was submitted before the FAA. The AO is directed to afford a reasonable opportunity of hearing to the assessee. The assessee shall co-operate with the Revenue and shall not seek adjournment without a valid reason. It is ordered accordingly.

7. In the result, the appeal filed by the assessee and the Revenue are allowed for statistical purposes.

Order pronounced in the open court on 18th November, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 18th November, 2024

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. राजस्व /Revenue
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.