

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2330/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2019-20

Mr. Suresh, 23 Old Library Point, Iyyanar Nagar, Puducherry-605 013.	v.	The ITO, Ward-3, Puducherry.
[PAN: APDPS 0293 M]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Chikkars Srikanth, Advocate & Mr. Tejpal Jain, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.K.N.Dhandapani, CIT
सुनवाईकीतारीख/Date of Hearing	:	28.11.2024
घोषणाकीतारीख /Date of Pronouncement	:	08.01.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 06.07.2024 for the Assessment Year (hereinafter in short "AY") 2019-20.

2. The assessee has raised several grounds of appeal. Ground No.1 is general in nature, so doesn't require any adjudication.



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**3.** Ground No.2 is against the action of the Ld.CIT(A) confirming the action of AO estimating business income @10% the net profit from the business of the assessee.

**3.1** Brief facts are that the assessee is an individual carrying on business of running transport carriers. The assessee has filed his return of income (RoI) declaring total income at Rs.28,42,190/-. Pursuant to notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short "the Act"), the Assessing Officer reopened the assessment and noted that assessee has shown turnover of Rs.2,88,12,296/- and has declared only profit of Rs.19,47,089/- which was @6% of the turnover; and in this regard, the AO noted that in the earlier years, assessee has shown profit as per the deemed profit u/s.44AE of the Act (for AY 2017-18 Rs.9,05,644/- & for AY 2018-19, Rs.12,25,102/-). According to the AO, since assessee has turnover of more than Rs.2 Crs. he had to audit his books of accounts which he failed to do and therefore, he rejected his books u/s.145(3) of the Act and computed the profit of the assessee @10% of the total receipts/turn over which he computed at Rs.28,81,229/-. On appeal, the Ld.CIT(A) confirmed the action of Assessing Officer. Aggrieved by the action of Ld.CIT(A), the assessee is before us.



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**3.2** Having heard both the parties; the afore stated facts are not repeated for sake of brevity. The assessee has not assailed the action of the AO rejecting the books of accounts of the assessee, hence the said action is not disturbed. And the assessee has restricted his contention only on the reasonability of estimation made by the authorities below. According to him both the authorities have not considered his nature of business and have arbitrarily estimated his income @10%. Having gone through the records, we are of the view that the AO ought to have estimated a reasonable profit considering the nature of the business of the assessee. We find that the assessee is carrying on business of transport operation by providing vehicles for transportation of goods and the assessee has shown to have declared profit @6% of the total turnover of Rs.2,88,12,296/- which turnover includes not only business from the transport, but other business receipts too. The Ld AR pointed out that the turnover from the transport operations was only Rs.1,88,12,296/- which was received from two clients M/s. India Nippon Electricals Ltd., & M/s.TVS Supply Chain Solutions Ltd., and the receipts are noted to have been received through banking channel to its accounts, which makes the assessee eligible for declaring profit under presumptive tax rate @6%. Therefore, we are of the view that since the assessee has offered profit @6% on its turnover from business of transportation at Rs.11,28,737/- [i.e. 6% of Rs.1,88,12,296/, the same is directed to be accepted @6%



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i.e. Rs.11,28,737/-. The balance amount of the gross turnover thus comes to Rs.1 Cr. (Rs.2,88,12,296/- minus Rs.1,88,12,296/-), which requires to be estimated @10%, since assessee failed to give the details of earning Rs.1 Cr. Thus, addition of Rs.10 lakhs stands confirmed. Thus assessee gets relief of Rs.7,52,492/- [Rs.10 lakhs + Rs.11,28,737/- = Rs.21,28,737/-] [Rs.28,81,229/- minus Rs.21,28,737/-].

**4.** Coming to Ground Nos.3 to 5, which are against the action of the Ld.CIT(A) confirming the cash withdrawal disallowed by AO u/s.40A(3) of the Act. Brief facts are that the AO noted that the assessee made cash withdrawal of Rs.27,26,464/- from his bank account. Therefore, he disallowed an amount equal to 10% of the total cash withdrawal u/s.40A(3) of the Act which comes to Rs.2,27,464/-.

**4.1** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the same.

**4.2** Having heard both parties, we are of the view that adhoc disallowance made by authorities below cannot be countenanced. And since AO has rejected the books and estimated the income and we have not disturbed the rejection of books and estimated the income (supra), there was no requirement to make any separate disallowance u/s. 40A(3) of the Act. Recently this Tribunal has taken similar view in the case of **ACIT vs Shri Irulandi Thevar Vetrivel** in ITA Nos.131 to



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136/Chny/2024 & ITA Nos.235 to 240/Chny/2024 for AYs 2016-17 to 2021-22 order dated 01.10.2024, wherein this Tribunal held as under:

48. It is also noted that, similar road construction companies engaged in the same line of business, viz., M/s Dilip Buildcon Limited, M/s D P Jain and Co Infrastructure Private Limited had reported profitability in the range of 3% to 9% across these years. Further, M/s SPL Infrastructure Private Limited, which is found to be most functionally comparable, as it is a Chennai-based entity engaged in executing road construction projects for NHAI, had also reported profitability in the range of 4% to 6%. It is noted that Hon'ble jurisdictional Madras High Court in the case of SPL Infrastructure Private Limited (420 ITR 213) had found net profit rate of 3.83% from road projects of NHAI to be a justifiable margin. As far as the decisions relied upon by Ld. CIT(A) is concerned, it is noted that the facts involved therein were factually distinguishable. We note that the years involved in these cases were 1980s & 1990s. We agree with the Ld. AR that the economics of road construction, tax structure, infrastructure and overall economic scenario was vastly different and hence the estimation exercise undertaken in these decisions cannot be considered as a comparable barometer for the years in question before us. Having regard to the foregoing, we thus hold that the profit of the assessee is to be estimated at 10% of the contractual receipts.

49. At this juncture, we also countenance the Ld. CIT(A)'s findings that once the books of accounts have been rejected and the profits are being estimated, then no further separate disallowance u/s 40A(3) or 40(a)(ia) is warranted. The Ld. AR further pointed out to us that, the assessee had offered 10% or more of contractual receipts in the returns of income filed u/s 153A of the Act for AYs 2016-17 to 2019-20 and profit in the range of 9.8% in AYs 2020-21 & 2021-22. The AO is accordingly directed to verify this contention and if found correct, no further addition shall be made in AYs 2016-17 to 2019-20; and he shall ensure that the total income is assessed at 10% of the contractual receipts from this road construction business in AYs 2020-21 & 2021-22. With these directions, the grounds raised by Revenue in all these appeals stands dismissed and the grounds taken by the assessee are partly allowed.

50. In the result, all the appeals of the Revenue are dismissed and the appeals of the assessee are partly allowed.

**4.3** In the light of the aforesaid discussion, we direct the AO to delete the ad hoc disallowance made u/s.40A(3) of the Act to the tune of Rs.27,26,464/-.

**5.** Ground Nos.6-9 are in respect of additions made by the AO u/s.69A of the Act to the tune of Rs.53,75,000/-.



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**5.1** Brief facts are that the AO noted that he received information that assessee has purchased immovable property in AY 2019-20 for an amount of Rs.53,75,000/-. Therefore, he asked the assessee to file necessary documents related to purchase of the property as well as to explain the source of the investment. According to the AO, despite providing opportunities, assessee failed to file the requisite information. Therefore, he made an addition of Rs.53,75,000/- u/s.69A of the Act.

**5.2** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) wherein the assessee brought to the notice of the Ld.CIT(A) that assessee had purchased agricultural land amounting to Rs.53 lakhs and filed copy of the Sale Deed; and it was brought to his notice that assessee had borrowed a loan from Indus Bank and part of it was used for purchase of property. It was also brought to the notice of the Ld.CIT(A) that the amount transferred to ICICI Bank was Rs.91,04,179/- on 13.04.2018, out of this amount, Rs.53 lakhs was paid to the vendors on 19.07.2018 and filed bank statement supporting the said assertion; and hence contented that said amount can't be termed as unexplained credit, since it was borrowed from the bank; and also brought to our notice that the amount in question was Rs.56 lakhs and not Rs.53,75,000/- as added by the AO. The Ld.CIT(A) noted from the document submitted before him that the assessee has taken '*housing loan*' and has purchased agricultural land and therefore, according to the Ld.CIT(A), since borrowed money for housing



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loan account have been used to purchase the agricultural land, he didn't accept the explanation of the assessee and confirmed the action of the AO to add Rs.53,75,000/- u/s.69A of the Act. We don't countenance the action of the Ld.CIT(A) for the simple reason that the AO has made the addition since assessee failed to produce any evidence regarding the source of investment for purchasing the immovable property worth more than Rs.53 lakhs. Therefore, the AO made the addition of Rs.53,75,000/- [assessee asserts that the sale consideration was to the tune of Rs.56 lakhs and not Rs.53,75,000/-]. From the discussion (supra) it can be seen that even though assessee produced for the first time evidence regarding source of investment before the Ld.CIT(A), he has not taken any Remand Report from the AO to verify whether the assessee had received loan amount from the Indus Bank which was utilized for purchase of the land in question. Be that as it may, since the AO didn't get opportunity to enquire about the veracity of explanation/relevant documents in support of it, we set aside the impugned order of the Ld.CIT(A) and restore this issue back to the file of the AO for *de novo* assessment. The assessee is directed to file his explanation and the relevant documents to substantiate the nature and source of the investment made in the immovable property in question and thereafter, the AO is directed to pass order in accordance to law on this issue only, without being influenced by the action of Ld CIT(A).



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6. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 08<sup>th</sup> day of January, 2025, in Chennai.

**Sd/-**

(अमिताभ शुक्ला)

**(AMITABH SHUKLA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08<sup>th</sup> January, 2025.

**TLN, Sr.PS**

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF