

आयकर अपीलीय 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.1700/Chny/2025
Assessment Years: 2012-13

Krishnamoorthy Ravi,
No.35J / I Nickenkottai (VILL),
Naickenkottai Post,
Dharmapuri,
Tamil Nadu-636 702,
[PAN: ATAPR4528H]

Income Tax Officer,
Ward-1,
Dharmapuri.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr.T.S.Lakshmi Venkataraman, F.C.A
(Virtual)

प्रत्यर्थी की ओर से /Revenue by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 25.08.2025

घोषणा की तारीख /Date of Pronouncement

: 10.09.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA / NFAC / S / 250 / 2022-23 / 1046005622(1) dated 27.09.2022 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment year 2012-13. The reference to the word "Act" in this order hereinafter shall mean the Income Tax Act, 1961 as amended from time to time.

2.0 It has been noted that there is a delay of 926 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that the assessee is a semi-illiterate Lorry owner cum driver and hence not conversant with the electronic working and digital communications. The assessee was dependent upon its tax practitioner who had got his own email id registered with the department. It has been submitted that this tax practitioner failed to timely follow assessee's affairs. It was only upon initiation of recovery proceedings, that the assessee learnt of its orders and proceeded to seek judicial remedy by filing this appeal. All these activities contributed to the delay which was neither willful nor wanton. The assessee submitted that there will not be case of any non-compliance now. We have considered the justification put forth by the assessee and we are satisfied with their adequacy. We are also conscious of the fact that no litigant gains by intentionally delaying its own matters. The Ld. DR did not pose any serious objections to the delay. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

3.0 The Ld.Counsel for the assessee submitted that the only issue seminal to the controversy raised through its grounds of appeal is regarding the determination of its taxable income by non-adoption of provisions of section 44AE in its case.

4.0 Brief factual matrix of the case is that no Return of Income for AY-2012-13 was filed by the assessee. Based upon the information regarding cash deposit in assessee's bank account, proceeding u/s 147 were initiated the assessee did not file any Return of Income in response to notice u/s 148 neither did he respond to any show cause notices issued by the Ld.AO. Based upon information available of cash deposits in assessee's bank account with IDBI and ICICI Bank, Dharmapuri Branch, the Ld.AO proceeded to make an addition of Rs.40,36,245/- u/s 68 of the Act. Before the Ld.CIT(A) the assessee challenged the assessment order both on the validity of the reassessment proceedings as well as merits of its addition. As regards validity of the reassessment proceedings, it was concluded that there was no legal infirmity in the order. The Ld.CIT(A) considered assessee's arguments that he is a Lorry owner and that the impugned cash deposits pertains to its business receipts. Accordingly, he set aside the assessment order directing the Ld.AO, through para 14 of his order, to carry out necessary verification as to whether the assessee is actually a Lorry owner deriving income therefrom and therefore eligible for determination of income u/s 44AE. The Ld.CIT(A) alternatively directed that in the event income of the assessee is not taxable u/s 44AE, then the Ld.AO would work out its addition by applying Peak Credit Theory.

5.0 Before us the appellate assessee through its grounds of appeal has once again taken the legal objections to the validity of the notice. Through ground of appeal No.4 it has been contested that the Ld.First Appellate Authority has sustained the impugned addition of Rs.40,36,245/-. It has been argued that the lower authorities should have accepted its hypothesis qua application of section 44AE.

6.0 Per contra the Ld.DR relied upon the order of lower authorities. It was argued that the assessee is non-compliant tax payer who did not file its Return of Income nor attended assessment proceedings. It was further submitted that the Ld.CIT(A) has already given relief to the assessee by setting aside the case to the Ld.AO to examine as to whether the assessee is actually a Lorry owner deriving income therefrom and therefore eligible for determination of income u/s 44AE or not. The Ld.CIT(A) alternatively directed that in the event income of the assessee is not taxable u/s 44AE, then the Ld.AO would work out its addition by applying Peak Credit Theory. It was urged that the assessee cannot therefore have any cause for grievance.

7.0 We have heard the rival submissions in the light of material available on records. We find sufficient force in the argument of the Ld.DR. It is undisputed fact on record that the assessee had not complied before the Ld.AO and had put forth the hypothesis of being a Lorry driver and hence liable for assessment u/s 44AE only before the

Ld.First Appellate Authority. We have noted that the Ld.CIT(A) has been fair enough in admitting this proposition but directing the Ld.AO to examine veracity thereof by seeing records produced by the assessee. We do not find anything wrong in the said directions. In fact, the Ld.CIT(A) has in total fairness gone a step ahead when he directs the Ld.AO to apply Peak Credit Theory qua cash deposits, in case assessee's income is not liable for assessment u/s 44AE. As regards, the legal challenge to the validity of 148 proceedings, we have noted that in para 11 of his order, the Ld.CIT(A) has extensively dealt the matter and we are wholly in agreement with his reasoning. Accordingly, we are of the considered opinion that no case is made out for any intervention to the order of the Ld.CIT(A) at this stage. The order of the Ld.CIT(A) is therefore confirmed and all the grounds of appeal raised by the assessee are dismissed.

8.0 In the result, the appeal of the assessee is dismissed.

Order pronounced on 10th , Sept-2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 10th , Sept-2025.

KB/-

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/**CIT** - Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF