

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

श्रीएम.बालगणेश, लेखासदस्यकेसमक्षएवं. श्रीएसएसविश्वनेत्ररवि, न्यायिकसदस्य  
**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.:2283 & 2284 /Chny/2025

निर्धारणवर्ष / Assessment Year:2011-12 & 2012-13

<b>ThiruvengatamVinayagam, No.2/9, Bye Pass Road, Redhills, Chennai-600 052. [PAN:AAGPV1428F]</b>	vs.	<b>Income Tax Officer, Non-Corporate Ward-10(3), Chennai.</b>
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

अपीलार्थीकीओरसे/Appellant by

: Mr.Hithesh, Advocate

प्रत्यर्थीकीओरसे/Revenue by

: Mr.C.P.Solomon, JCIT

सुनवाईकीतारीख/Date of Hearing

: 22.10.2025

घोषणाकीतारीख/Date of Pronouncement:

24.10.2025

**आदेश / O R D E R**

**PER M. BALAGANESH, AM :**

This appeal by the assessee is filed against the order of the learned Commissioner of Income Tax (Appeal), NFAC, Delhi, (in short Ld.CIT(A) for the assessment years 2011-12 and 2012-13, vide orders dated 19.06.2025 and 20.06.2025 respectively.

2.0 The assessee has raised the following grounds of appeal before  
US:-

*1. The order of the learned Commissioner of Income Tax [Appeals]. National Faceless Appeal Centre (NFAC), Delhi for the above Assessment Year is contrary to the law, facts and in the circumstances of the case.*

*2. The learned CIT(A) has erred in law and on facts in upholding the action of the learned Assessing Officer in not estimating the income of the assessee considering the nature of the assessee's business of plying goods carriages and the reasonableness of income estimation based on industry standards.*

*3. The learned CIT(A) has failed to appreciate that although the assessee owned more than ten trucks and hence was not eligible for the presumptive scheme under Section 44AE of the Income-tax Act, 1961, the said provision still provides a reasonable basis for estimating income in transport business cases, particularly in the absence of proper books of account, as upheld by the Hon'ble ITAT, Chennai, in the appellant's own case for AY 2015-16 in ITA No. 75/CHNY/2019 dated 30.05.2019,*

*4. The learned CIT(A) has erred in not directing the Assessing Officer to estimate the income of the assessee by taking guidance from the presumptive taxation scheme under Section 44AE, to ensure a fair, equitable, and non-arbitrary estimation.*

*5. That the income as estimated by the Assessing Officer is excessive, unjustified, and not supported by any comparable cases or consistent accounting method.*

*6. That the learned CIT(A) has erred in confirming the addition made without assigning cogent reasons and without considering the past history and business realities of the transport sector.*

*7. That the learned CIT(A) has erred in sustaining ad hoc disallowances under the heads of driver & cleaner wages, diesel charges, loading & unloading charges, and new tyres & retreads*

*expenses, in merely reducing the disallowance percentage, which is still arbitrary and excessive.*

*8. That the learned CIT-(A) erred in confirming the action of the learned assessing officer in disallowance of depreciation of Rs. 70,43,606/-*

*9. That the order passed by the learned CIT-(A) is bad in law and liable to be quashed.*

*10. The appellant craves leave to add, amend, modify, or withdraw any of the above grounds at the time of hearing.*

3.0 As identical issues are involved in both the issues, facts relevant for assessment year 2011-12 are taken up for adjudication and decision rendered thereon shall apply mutatis mutandis for assessment year 2012-13 also except in following figures.

4.0 We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of lorry transport. The return of income for assessment years 2011-12 was filed by the assessee on 31.10.2011 declaring a total income of Rs.6,56,750/-. It was duly processed u/s 143(1) of the act. Subsequently, the case of the sought to be reopened vide issuance of notice u/s 148 of the act on 24.03.2018. In response to the said notice, the assessee filed his return of income on 17.04.2018 declaring the same total income of Rs.6,56,750/-. The assessee is a proprietor of Velmurugan Lorry service engaged in the business of running Lorries for

hire. It is not in dispute that assessee owns more than 10 Lorries. The assessment was completed u/s.143(3) r.w.s 147 of the Act on 27.12.2018 for assessment year 2011-12 determining total income of Rs.65,35,793 after making the following additions / disallowances:-

- a. Excess depreciation disallowed – Rs.8,88,335/-
- b. Adhoc disallowance of certain finance expenses at 10% - Rs.11,15,347/-.
- c. Disallowance u/s 40a(ia) on account of interest – Rs.7,16,625/-.
- d. Disallowance of expenditure – Rs.31,58,736/-.

5.0 The assessee pleaded before the Ld.AO as well as before the Ld.AO that though the return of income was filed after duly getting his accounts audited from an independent C.A, the books of accounts were lost and damaged due to severe floods that occurred in Chennai. Hence, the assessee was prevented from sufficient cause by not producing the books of accounts together with the supporting vouchers even though the same were indeed available at the time of filing of return which alone enabled the independent C.A to conduct the audit of the books. Accordingly, the assessee expressed his inability to produce the books of accounts and documentary evidence to buttress the issues that were subject matter of additions and disallowances. It was also pointed out to the Ld.CIT(A) that the Coordinate Bench of this Tribunal in

assessee's own case for assessment year 2015-16 had directed the revenue to adopt the profit by applying the presumptive income prescribed in section 44AE of the Act on estimated basis. The Ld. CIT(A) however ignored the contentions of the assessee and upheld the additions and disallowances made by the Ld.AO after giving marginal relief on account of adhoc disallowance of expenses by 3% i.e. 10% adhoc disallowance reduced to 7%.

6.0 We find that the identical issue was subject matter of consideration by this Tribunal in assessee's own case for assessment year 2015-16 in ITA No.75/Chny/2019 dated 30.05.2019 wherein it was held as under:-

*"...5. Being aggrieved by the order of the Id. Commissioner of Income Tax (Appeals), the appellant is in appeal before us in the present appeal. It is contended before us that though the provision of presumptive taxation u/s.44AE of the Act are not strictly applicable to the assessee, guidance can be taken from the provision of Section 44AE and presumptive rate of tax can be applied placing reliance on the decision of Ahmadabad Bench (camp at Surat) of the Tribunal in the case of Gayatri Corporation vs. ITO in ITA Nos.894 & 1099/Ahd/2014, dated 05.04.2017.*

*6. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities*

*7. We heard the rival submissions and perused the material on record. The Assessing Officer made several disallowance resulting in assessed income two or three times higher than the returned income. Assessee is engaged only in transport business owning sixteen vehicles. The dispute is only with regard to estimation of income though provisions of Section 44AE of the Act are not strictly applicable. The Ahmadabad Bench of the Tribunal in the case of Gharmarbai Chaudhary vs. ITO, 23 taxmann.com 273 had held as under:-*

*"4. We have carefully considered the arguments of both the sides and perused the material placed before us. It is not in dispute that the assessee was plying the goods carriage which were four. Therefore, the number of goods carriages plied by the assessee was well within the ambit of the section 44AE. The Assessing Officer has rejected the book result and has estimated the income by making various disallowance out of the expenses claimed by the assessee. He also enhanced the receipt shown by the assessee. The estimated disallowance made by the AO were partly reduced by the CIT(A). Therefore, undisputedly, in the assessee's case, the actual dispute is only with regard to estimation of the income from trucks plying business. In our opinion, when the Legislature has provided some formula for estimation of income in the case of a transporter, who owns less than ten goods carriages, there would not be any justification for not estimating the income of the assessee as per the formula prescribed in section 44AE. It is irrelevant whether the revised return furnished by the assessee is ITA No.2626/Ahd/2010 Kesharbai G. Chaudhary vs. ITO Asst. Year 2006-07 valid or not. When the question of estimation of the income of a transporter comes, section 44AE is a good guideline in the case of transporter who owns less than 10 goods carriage. In view of the above, we direct the AO to determine the income of the assessee as per the section 44AE of the IT Act.*

*and this decision was followed Ahmadabad Bench (camp at Surat) of the Tribunal in the case of Gayatri Corporation (supra). In our opinion, it is a fit case to estimate the profit provision from plying trucks at the rate prescribed under the provisions of section 44AE of the Act. Accordingly, we direct the Ld. Assessing Officer to compute the profit from plying trucks by applying the provisions of section 44AE of the Act.*

*8. In the result, the appeal of the assessee is partly allowed...."*

Respectfully following the same, the grounds raised by the assessee are partly allowed for assessment year 2011-12.

7.0 As stated earlier, the decision rendered for assessment year 2011-2012 shall apply mutatis mutandis for assessment year 2012-13 also in view of identical facts except with variance in figures.

8.0 In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the court 24<sup>th</sup>, October, 2025 at Chennai.

**Sd/-**

(एसएसविश्वनेत्ररवि)

**(S.S. VISWANETHRA RAVI)**

न्यायिकसदस्य/JUDICIAL MEMBER

**Sd/-**

(एम.बालगणेश)

**(M. BALAGANESH)**

लेखासदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated 24<sup>th</sup>, October, 2025

KB/-

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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