

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No 2285/Chny/2025

निर्धारण वर्ष/**Assessment Year: 2016-17**

THIRUVENGATAM VINAYAGAM No. 2/9, Bye Pass Road, Redhills Tamil Nadu-600 052 [PAN: AAGPV 1428 F]	v.	The ITO NON CORPORATE WARD 10(3), CHENNAI
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant/Assessee by	:	Mr. D ANAND, ADVOCATE
प्रत्यर्थी की ओर से /Respondent/Revenue by	:	Ms. R. Anitha, Addl. CIT
सुनवाई की तारीख/Date of Hearing	:	13.11.2025
घोषणाकीतारीख /Date of Pronouncement	:	10.02.2026

आदेश / ORDER

PER MANU KUMAR GIRI, JM:

This captioned Appeal filed by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ['CIT(A)' in short] dated 07.07.2025 for Assessment Year 2016-17.



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2. Grounds of Appeal

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. *The learned CIT(A) has erred in confirming the addition made towards sale of land-LTCG amounting to Rs.25,83,109/-.*

8. *The learned CIT(A) has erred in confirming the addition towards purchase of vacant land amounting to Rs. 16,85,000/- under Section 69 of the Act.*

9. *The learned CIT(A) has erred in confirming the addition towards sale of vacant land amounting to Rs.25,00,000/- under section 68 of the Act.*

10. *The learned CIT(A) has erred in sustaining the addition towards sundry creditors amounting to Rs.22,16,745/- under section 68 of the Act.*



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11. The learned CIT(A) has erred in sustaining the addition towards sundry debtors amounting to Rs. 18,25,802/- under section 68 of the Act.

12. The learned CIT(A) has erred in confirming the addition towards lease advance amounting to Rs.30,00,000/- under section 68 of the Act.

13. The learned CIT(A) has erred in confirming the addition of loan in cash amounting to Rs.2,00,000/- under section 68 of the Act.

14. The learned CIT(A) has erred in confirming the addition towards disallowance u/s 40(a)(ia) (interest paid without deduction of TDS) of the act amounting to Rs.1,57,311/-.

15. The learned CIT(A) has erred in confirming the addition towards disallowance u/s 40(a)(ia) (Professional Charges) of the act amounting to Rs.91,269/-.

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

17. The appellatant craves leave to add, amend, modify, or withdraw any of the above grounds at the time of hearing.

3. The assessee is an individual who is engaged in the business of Lorry Transport. The assessee filed his return for the assessment year under consideration, i.e., 2016-17 declaring total income of Rs.8,30,570/-. The case of the assessee was selected for limited scrutiny. Statutory notices u/s.142(1) were issued to the assessee on various dates seeking for certain details. The assessee filed its reply vide letter dated 18.04.2018. The assessee submitted that the auditor Mr.V.Krishnamoorthy who had audited the accounts u/s.44AB of the Act for the A.Y. 2016-17, has expired and hence the books of accounts was not accessible. Further, M/s.Akbar Rifa & co., Chartered accountants, prepared the revised financials based on the books of accounts produced in tally data and hardcopy. The assessee also submitted that the vouchers, bills related to first 8 months of the financial year under consideration were destroyed in



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the flood in December 2015(evidence in the form of property loan sanction letter enclosed) and hence the same cannot be produced.

4. The Assessing Officer did not accept the contention of the assessee and referred the case for special audit u/s.142(2A) of the Act to M/s.Jain Bafna and Associates, CAs. The special audit report was given to Assessing Officer. Based on the same, the Assessing Officer assessed the total income at Rs.1,51,16,889/- as against the returned income of Rs.8,30,570/- by making following additions to the total income of the assessee for the assessment year under consideration and passed an order u/s.143(3) of the Act dated 20.08.2019:

Particulars	Amount in Rs.
Returned Income	8,30,570
Sale of land - LTCG	25,83,109
Income u/s.64 gift to wife	27,083
Purchase of vacant land u/s.69	16,85,000
Sale of vacant landu/s.68	25,00,000
Sundry creditors u/s.68	22,16,745
Sundry Debtors u/s.68	18,25,802
Lease Advance u/s.68	30,00,000
Acceptance of loan in Cash u/s.68	2,00,000
Disallowances u/s.40a(ia) (interest paid without deduction of TDSJ	1,57,311
Disallowances u/s 40a(ia) (Professional Charges	91,269
Assessed Income	1,51,16,889

5. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).



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6. The Id.CIT(A), on perusal of the submissions of the assessee, dismissed all the grounds and confirmed the Assessing Officer's order by passing an order dated 07.07.2025 by holding as under:

"6.2 The main argument put forth by the assessee is regarding the claim made by the assessee that profit shall be computed u/s.44AE of IT Act, 1961.

On perusal of various submissions made by the Appellant, it is seen that the Appellant has requested for application of Section 44AE of IT Act, 1961 to compute profit in the impugned case. Appellant has got its books of accounts audited on 10.10.2016. However, it is seen that Appellant has not opted for computing profit u/s 44 AE of IT Act, 1961 while filing return of income. On verification of return of income filed by the Appellant, it is emanating from Schedule BP in ITR, that Appellant has computed profit from Business arriving from Profit and Loss Account. Appellant has not chosen section 44AE in the same schedule in ITR for AY 2012-13."

7. Further, all the additions made by the Assessing Officer in his assessment order were confirmed by dismissing all the grounds of the assessee.

8. Aggrieved by the order of the Id.CIT(A) the assessee is in appeal before us.

9. The Id.AR for the assessee assailing the action of the Id.CIT(A) submitted that the Id.CIT(A) has erred in rejecting the claim of the assessee to consider the claim of section 44AE of the Act, as the nature of business of the assessee is transport. Further, both the Assessing Officer as well as the Id.CIT(A) have erred in adopting the details and findings given by the special auditor u/s.142(2A) of the Act, which was based on the assumptions and surmises, as the assessee had lost the books of



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accounts and vouchers and other documents in flood during December 2015 itself. Further, the Id.AR submitted that the claim of the assessee was to adopt the provisions of section 44AE of the Act to estimate the income of the assessee, as the assessee had lost the entire books of accounts and records in floods during December 2015.

10. The Id.AR also drew our attention to the Tribunal order in ITA No.75/Chny/2019 dated 30.05.2019 for the A.Y. 2015-16, wherein in assessee's own case, the Tribunal directed the Assessing Officer to take guidance from provisions of Section 44AE of the Act, when the assessee was owning 16 Transport vehicles. Further, the said decision has been followed by the Tribunal in assessee's own case in ITA No.2283 and 2284/Chny/2025 dated 24.10.2025 for the A.Y.2011-12 and 2012-13 and directed to follow the provisions of section 44AE of the Act to arrive at the total income of the assessee. In view of the above arguments the Id.AR for prayed deleting the additions made by the Assessing Officer and allow the claim of the provisions of section 44AE of the Act for the impugned year also.

11. Per contra, the Id.DR supported the orders of the Assessing Officer and the Id.CIT(A) and submitted that the assessee is owning morethan 10 vehicles and hence the provisions of section 44AE is not applicable to the



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present facts of the case. Therefore, the Id.DR prayed for confirming the order of the Id.CIT(A).

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"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



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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



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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.”

12. We have carefully considered the rival submissions, perused the material available on record and gone through the orders of the authorities along with the judicial precedents relied upon. The assessee is an individual engaged in the business of lorry transport. It is an admitted fact that the assessee owned more than ten goods carriages during the year under consideration. It is also undisputed that the assessee’s books of account, vouchers and supporting evidences for a substantial part of the relevant previous year were destroyed in the floods that occurred in December 2015, a fact which has not been controverted by the Revenue. The assessee’s case was selected for limited scrutiny. However, owing to non-production of complete books of account, the Assessing Officer referred the matter for special audit under section 142(2A) of the Act and thereafter proceeded to assess the income by making multiple additions u/s.68, 69, 40(a)(ia) and by estimating business income, resulting in an assessed income of Rs.1,51,16,889/- as against the returned income of Rs.8,30,570/-.



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13. The primary grievance of the assessee before us is that both the Assessing Officer as well as the Id. CIT(A) erred in not adopting a reasonable method of estimation of income having regard to the nature of transport business and in ignoring the consistent view taken by the Coordinate Benches of this Tribunal in the assessee's own case for earlier assessment years.

14. At the outset, we note that the provisions of section 44AE of the Act are admittedly not strictly applicable to the assessee since the assessee owned more than ten goods carriages during the relevant previous year. However, the issue before us is not the strict application of section 44AE, but whether the presumptive scheme contained therein can be taken as a reasonable guiding yardstick for estimation of income, particularly when the books of account are not available and the business carried on is purely transport business.

15. On this issue, we find that the Coordinate Bench of this Tribunal in assessee's own case for A.Y. 2015-16 in ITA No.75/Chny/2019 dated 30.05.2019, after considering identical facts, categorically held that even where section 44AE is not strictly applicable, the provisions thereof provide a fair and reasonable basis for estimating income from transport business. The Tribunal, relying upon the decision of the Ahmedabad Bench in Kesharbhai Gharmarbai Chaudhary vs. ITO [23 taxmann.com



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273], directed the Assessing Officer to compute the income by applying the rates prescribed u/s.44AE of the Act. The relevant portion of the order is extracted below:

"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 Kesharbai 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 ten 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 by 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 Id. Assessing Officer to compute the profit from plying trucks by applying the provisions of Section 44AE of the Act."



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16. Further, the said view has been consistently followed by this Tribunal in assessee's own case for A.Ys. 2011-12 and 2012-13 in ITA Nos.2283 & 2284/Chny/2025 dated 24.10.2025. Thus, there exists a consistent judicial precedent in assessee's own case, on identical facts, directing estimation of income by taking guidance from section 44AE of the Act.

The Id. CIT(A) rejected the assessee's claim primarily on the ground that the assessee did not opt for section 44AE while filing the return of income and that the books of account were audited u/s.44AB of the Act. In our considered opinion, this reasoning is legally untenable. Once the books of account were admittedly not available due to circumstances beyond the control of the assessee and the Assessing Officer himself was not satisfied with the correctness and completeness of the accounts, the question before the appellate authorities was to determine a fair and reasonable method of estimation, and not merely to examine whether the assessee had opted for section 44AE in the return of income.

17. It is well settled that when income is to be estimated, such estimation cannot be arbitrary or excessive and must be based on some rational basis having nexus with the nature of business and past history of the assessee. The Id. CIT(A), in our view, failed to appreciate this settled legal position and also failed to follow the binding decisions of the Coordinate Benches rendered in the assessee's own case.



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18. Once the income from transport business is estimated on a presumptive basis, it is a settled principle of law that separate additions on account of cash credits, sundry creditors, sundry debtors, lease advances and disallowances of expenses do not ordinarily survive, unless the Revenue establishes that such items represent independent and unexplained sources of income not connected with the business.

19. In the present case, the additions made u/s.68 and 69 as well as disallowances u/s.40(a)(ia) are all intrinsically linked to the business operations and to the books of account which themselves were not accepted. The Assessing Officer has not brought on record any material to demonstrate that these items represent income from sources outside the transport business. Therefore, once income is estimated by applying a presumptive basis, the impugned additions cannot be sustained.

20. As regards the addition towards long-term capital gains on sale of land, we find that the same also requires fresh examination in light of the overall estimation of income and availability of evidence, and therefore, the same is also liable to be set aside for reconsideration by the Assessing Officer.

21. In view of the foregoing discussion, and respectfully following the binding decisions of the Coordinate Benches of this Tribunal in assessee's own case for earlier assessment years, we hold that this is a fit case for



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estimation of income by taking guidance from the provisions of section 44AE of the Act.

22. Accordingly, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to recompute the income of the assessee by estimating the profits from transport business by applying the rates prescribed u/s.44AE of the Act as a guiding principle. Consequential additions and disallowances made u/s.68, 69 and 40(a)(ia), being subsumed in such estimation, are directed to be deleted. The sole addition towards long-term capital gains on sale of land requires fresh examination in light of the overall estimation of income and availability of evidence, and therefore, the same is also set aside for reconsideration by the Assessing Officer.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on the 10th day of February, 2026, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th February, 2026.

SNDP, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:



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