

**आयकर अपीलिय अधिकरण “ए” न्यायपीठ मुंबई में।**

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संजय गर्ग, न्यायिक सदस्य

Before S/Shri Rajendra, A.M. and Sanjay Garg, J.M.

**आयकर अपील सं./ITA No.1211/Mum/2013, निर्धारण वर्ष /Assessment Year: 2006-07**

Shri Lal Bahadur Jaiswal Suman Stores Coal, Bunder Plot No.12 Sewri, Mumbai. <b>PAN: AABPL 0866 C</b>	Vs.	Income tax Officer-17(3)(3) Matru Mandir Bldg., Tardeo Rd., Grant Rd., Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by:** Shri Pavan Kumar Beerla

**Assessee by:** Shri Suresh R. Sharma

सुनवाई की तारीख / **Date of Hearing:** 18.01.2017

घोषणा की तारीख / **Date of Pronouncement:** 15.02.2017

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra, AM:**

Challenging the order, dated 16/11/2012, of the CIT (A)-16, Mumbai the assessee and has filed the present appeal. Assessee, an individual, engaged in the business of running trucks on hire basis, filed his return of income on 31/10/2006, declaring total taxable income of Rs. 4.19 lakhs u/s.44 AE of the Act. The Assessing Officer (AO) completed the assessment, u/s.143(3), on 31/12/ 2008, determining his income at Rs.21.71 lakhs.

2. Effective ground of appeal is about not accepting the deemed net profit under special provision of section 44 AE of the Act. During the assessment proceedings the AO found that as per the claim of the assessee he was having six trucks, that he was not maintaining any books of a/c.s, that he had offered income derived from transportation business for taxation as per the provisions of section 44 AE. On going through the return and other supporting documents, the AO observed that the assessee was having total turnover of Rs.1,13,58,269/-, that he was doing business of hiring trucks for Rajasthan Spinning and Weaving Mills Ltd. (RSWML). He issued a notice u/s.133(6) to RSWML. The company, in response to his notice, furnished ledger copy of the transactions with the assessee. It also filed detailed statement providing information regarding the truck wise charges paid by it to the assessee. The analysis of the information provided by the company revealed that assessee had been using other trucks belonging to other transporters along with his six trucks for the purpose of running his business, that he was also hiring trucks from

other transporters on commission basis. The AO was of the opinion that the act of hiring trucks on commission basis/hiring trucks of other transporters was not covered by the provision section 44AE of the Act. From the TDS certificates filed by the assessee along with the return it was observed that the assessee had utilised numerous trucks. Therefore, he directed the assessee to furnish the bifurcations of the hiring charges receipts from his own trucks as well as from other trucks which had been used on hire basis. As per the AO, the assessee did not submit any details as called for nor did it file any submission in respect of the hiring charges receipts. The assessee stated that he was not in a position to furnish such details. The AO observed that the assessee had neither maintained any books of accounts nor had kept documents/proof about his business, that section 44 AE was not applicable to the facts of the case. He rejected the claim made by the him with regard to receipt of Rs. 1.13 crores. Treating the said sum as total turnover of the assessee for the year under consideration, the AO estimated net profit @20%.

**3.** Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). He made elaborate submissions before the FAA and stated that all the details called for by the AO were submitted during the assessment proceedings, that section 44 AE provided for declaring minimum income of Rs. 42,000 per truck that he had declared Rs. 90,000 per truck for the year under consideration, that the estimate of the AO at Rs. 3.8 lakhs per truck was exorbitant and without any justification, that the AO had not given any specific basis and applied rate of 20% of the turnover.

After considering the submission of the assessee and the assessment order, the FAA mentioned that a comparable case was found, being MS Road Lines, that MS Road lines was also engaged in business of transportation. The FAA tabulated the gross receipts, net profits, that profit ratio percent is for the assessment years 2007-08 to 2009-10 and held that in the above-mentioned case the assessee had declared an average net profit ratio at 42.7% and consistently above 38% in the three successive years, that it was considerably higher than the estimated profit adopted by the AO, that the AO had decided the issue on the conservative side while estimating the net profit. Finally, the FAA confirmed the order of the AO.

**4.** During the course of hearing before us, the Authorised Representative (AR) argued that as per the provisions of section 44 AE profit had to be estimated at the rate of 8%, that the assessee had

five trucks only, that the estimation was on higher side. He referred to the case of M. Rajendran (65SOT42). The Departmental Representative (DR) supported the order of the AO and the FAA.

5. We have heard the rival submissions and perused the material before us. We find that the assessee had filed his return of income about the transportation business, as per the provisions of section 44AE of the Act, the AO made certain enquiries during the assessment proceedings and found that the assessee was hiring trucks on commission basis and was also using trucks of other transporters, that he held that assessee was not covered by the provisions of section 44 AE, that he applied the rate of 20% of net profit with regard to the total receipt of the assessee for the year under consideration, that the FAA, after considering the case of MS Road lines, held that the estimation made by the AO was on lower side.

5.1. Before proceeding further, we would like to discuss the provisions of section 44AE of the Act. It was introduced by the Finance Act of 1994 with effect from 01/04/1994 and provides the method of estimating the income from the business of plying, hiring or leasing trucks owned by the assessee. The section applied to persons owning not more than ten trucks. The income from each truck, being a heavy goods vehicle, is estimated at Rs. 3,000 for every month or part of a month. The income from each truck, other than a heavy goods vehicle, is estimated at Rs. 3,100/- for every month or part of a month, as per the amended provisions in the year 2004. As per section 44AE(3), any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. The scheme is optional. If the assessee produces evidence that profits and gains from the business of plying the lorries during the year is less than the profits and gains specified in sub-sections (1) and (2), the AO should proceed to make the assessment and determine the total income or loss u/s. 143(3) of the Act. The said option is given to the assessee u/s. 44AE(6).

We find that the AO and the FAA have given categorical finding of fact that assessee was using trucks owned by others for carrying out his business activities during the year under appeal. He has not brought on record to controvert the fact that he had hired trucks on commission basis also. The provisions of section 44 AE talks of trucks owned by an assessee. The AO had made enquiries with the company that was the main source of income for the assessee. After collecting the evidences, including the tax deducted at source certificates, he had directed the assessee to

segregate the income from his own trucks as well as from the trucks hired by him. The assessee did not file any explanation in that regard. In the circumstances, he was left with no other option but to estimate the income of the assessee. It is found that the FAA has compared the case of one of the transporters while deciding the appeal.

Considering the facts—that assessee is a small-time operator doing transportation business with his six trucks, that he has not maintained regular books of accounts, that he had hired the trucks of other transporters—we are of the opinion that ends of justice would meet, if the estimated profit rate is restricted to 15% as against 20% adopted by the AO. Effective ground of appeal, raised by the assessee, is decided in his favour, in part.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 15<sup>th</sup> February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 15<sup>th</sup> फरवरी, 2017 को की गई।

Sd/-

(संजय गर्ग /Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 15.02.2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ E ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.