

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2263/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Asstt. Commissioner of
Income Tax,
Non-Corporate Circle-1(1),
Chennai-34.

v. Shri Chidri Venkata Narasimha
Rayal,
No.3, Vigneshwara Apartments,
1st Floor, New No.9, Periyar Road,
T. Nagar, Chennai – 17.

(अपीलार्थी/Appellant)

[PAN: ABSPN 0788 R]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri N. Devanathan, Advocate

सुनवाई की तारीख/Date of Hearing : 12.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश / O R D E R

PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER:

This appeal of the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Chennai, dated 30.03.2016 and pertains to the assessment year 2011-12.

2.0 The assessee has raised the following grounds of appeal:

1. *The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.*
2. *The learned CIT(A) has erred in directing the Assessing Officer to estimate the income of the assessee @ 1.5% of the gross turnover, as against 3.5% adopted by the Assessing Officer without appreciating the fact that the assessee had not co-operated with the Assessing Officer during the assessment proceedings nor had the assessee produced any evidence to the contrary.*
3. *The learned CIT(A) ought to have appreciated the fact that the Assessing Officer was compelled to estimate the profit @ 3.5% of the turnover, due to non-furnishing of requisite details by the assessee and in the absence of any convincing evidence to prove otherwise, the CIT(A) ought not to have restricted the disallowance to a mere 1.5% of the turnover.*
4. *The learned CIT(A) erred in restricting the disallowance to 1.5% of the turnover and further by a sum of Rs.12 lakhs in a situation where the assessee was show caused to assess the income @ 3.5% of the turnover by the Assessing Officer and the assessee still not having produced any evidence to prove to the contrary.*
5. *The learned CIT(A) erred in accepting the additional evidences submitted by the assessee without giving an opportunity to the AO to*

examine the evidence produced by the assessee, which is a mere violation of Rule 46A of the I.T. Rules.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

3.0 All the grounds of appeal are related to the estimation of income by the Assessing Officer. The assessee is engaged in the trading and export of onions, chillies, maize, ground nuts etc., For the assessment year 2011-12, the assessee filed return of income admitting total income of ₹55,24,201/- and subsequently revised the return of income to ₹55,28,269/-. The case was selected for scrutiny. The Assessing Officer has posted the case for hearing on number of occasions, but the assessee has not furnished the required information and the details called for, for completion of the assessment. Therefore, the Assessing Officer completed the assessment estimating the income @3.5% excluding other income which worked out to ₹4,80,59,068/- and the other income of the assessee credited to P&L A/c was ₹1,86,23,166/-. Thus, the total income was assessed to ₹5,86,87,035/-.

4.0 Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the

addition of indirect income amounting to ₹1,86,23,166/- which was offered as other income in the P&L account and reduced the estimation of income to 1.5% of total income against the estimation made by the Assessing Officer at 3.5%. For the sake of convenience, we extract the relevant paragraph of the CIT(A) order in page No.8, para No.5.3.1(vi) as under:

“Notwithstanding the above, it should be kept in view that there has been an overall decline in the business of the appellant, which is reflected in the fact that the appellant’s banker, UCO Bank, has classified the appellant’s account as non-performing asset category as per RBI norms, and the further fact that the bank has appointed Madras Asset Recovery Co. Ltd., as the enforcement/recovery agent for assessing them in recovery of their dues from the appellant, as is reflected in the letter dt. 2.3.2013 addressed by the bank to the appellant.

Hence, taking a reasonable view of the facts and circumstances of the appellant’s case, the ends of justice would be met, by fairly estimating the Net Profit of the appellant at the rate of 1.5% of the total turnover.

From the return of income, it is seen that the total turnover is Rs.84,10,24,770/-. 1.5% of the same works out to Rs.1,26,15,372/-. Adding back the entire amount of indirect income, as done by the Assessing Officer, i.e., Rs.1,86,23,166/-, the total estimated income of the appellant works out to Rs.3.12 crores

(approx.). The total income of the appellant is hence, further fairly estimated by rounding off the same, to Rs.3 crores.

The Assessing Officer has made a total disallowance of Rs.4,80,59,068/-. Based on the computation made, by estimating the Net Profit at the rate of 1.5% of total turnover and rounding off the same to Rs.3 crores, the appellant gets a relief of Rs.1,80,59,068/-.”

5.0 Aggrieved by the order of the Ld.CIT(A), the department is in appeal before us. Appearing for the Revenue, Shri Shiva Srinivas, the Ld. Departmental Representative argued that the assessee has not co-operated with the department throughout the assessment proceedings and has not produced the details, books of account, bills and vouchers in spite of giving summons under Section 131 of the Act. The assessee has not furnished the requisite details and evidence to support the income returned by the assessee, hence the A.O issued show cause notice proposing to estimate the income @3.5% for which the assessee filed reply with the explanation which is general in nature. The D.R submitted that even for show cause notice the assessee has not submitted the explanation demonstrating the profit is below 3.5%. Therefore, the Assessing Officer has no option except to estimate the income which was done by the Assessing Officer and completed the

assessment estimating 3.5% of the income. In the absence of any evidence to support the accounts, according to the Ld. DR, the Assessing Officer rightly estimated the income which should be confirmed.

6.0 On the other hand, the Ld. AR submitted that there was a continuous reduction in the profits of the assessee due to various reasons explained before the Ld.CIT(A). The AR submitted that the Assessing Officer called for particulars which was furnished such as ledger accounts together with audited accounts, P&L account, Income tax return, tax audited report and complete bank accounts. The other details could not be produced since there was a damage in godown during monsoon and could not be produced. However, it was explained by the assessee to the Assessing Officer that export commodities world over is with just 1% margin and as can be seen from the export house and chamber of commerce reviews and with international glut due to market recession lead to huge bad debts and losses ending up with some kind of loss. Further, the AR submitted that though, the export houses are reporting losses due to foreign exchange fluctuation, still the assessee had reported the profit @ 0.38% of the turnover. The Assessing Officer has taxed at the rate of 4% of turnover since all the

commodities like petrol, diesel are traded under 2% margin and agro commodities at 1% internationally. Therefore, the Ld. AR., vehemently opposed the order of the Assessing Officer estimating the income at the rate of 3.5% of total income.

7.0 We heard the rival submissions and perused the materials on record. The assessee has produced ledger accounts but not produced the bills, vouchers and verifiable evidence to support the trading and Profit & Loss account to arrive at the correct income of the assessee. Though, the Assessing Officer has called for the details, the assessee failed to furnish the details called for by the Assessing Officer which is evident from Page No.2 Para Nos.2 & 3 of the assessment order. The AO has issued show cause notice, but the assessee did not produce any evidence and demonstrated that his profit is less than 3.5%. Therefore, the AO estimated the income @3.5% of turnover.

8.0 The income cannot be assessed on the basis of the reviews and seminars on presumptions and assumptions. The income has to be computed as per the evidences produced by the assessee. The assessee required to maintain books of accounts and furnish the evidence in support of the claims made in the return of income. Though,

the assessee claimed that books of accounts were lost, no evidence was produced by the assessee regarding the lost books of accounts and demonstrated with the available evidence that the profit is less than 3.5% inspite of giving show cause. In the absence of evidence in support of the claim, there is no option for the Assessing Officer except to estimate the income on the basis of relevant material available with the Assessing Officer.

In this case, the Assessing Officer has estimated the income at the rate of 3.5% of the total turnover apart from the indirect income. Though the AO is justified in rejecting the books of accounts and estimation of income, the estimation should be fair and reasonable and not arbitrary. No comparable case has been brought on record to support the estimation. The Ld.CIT(A) has estimated the income at the rate of 1.5% but this is also not supported by any material placed on record as discussed above.

The Revenue has raised the ground that the Ld. CIT(A) has accepted the additional evidences and no opportunity was given to the Assessing Officer to rebut the additional evidence. Therefore, we are of the considered opinion that the case should be remitted back to the

Assessing Officer to consider the additional evidences furnished before the Ld. CIT(A) and to determine the true and correct income afresh on merits. Both the parties have agreed for remitting the matter back to the file of the Assessing Officer to consider the entire material and re-adjudicate the assessment in accordance with law on merits.

9.0 In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open Court on 31st January, 2017 at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 31st January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.