

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **2720/CHNY/2019**

निर्धारण वर्ष /Assessment Year:2013-14

Shri Selvaperumal Govindraj,
No.107, Nehru Bazaar,
Uthukottai – 602 026.

The Income Tax Officer,
v. Ward - (1),
Tiruvallur.

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(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.04.2022

घोषणा की तारीख/Date of Pronouncement

: 08.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the learned Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.113/CIT(A)-7/2018-19 dated 28.06.2019. The assessment was framed by the ITO, Ward-1, Tiruvallur for the assessment year 2013-14 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 28.12.2018.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in computing the profits and gains of business on presumptive basis on Section 44AD of the Act by applying profit rate @ 8% of total turnover.

3. We have heard both the sides and perused the case records. We have gone through the assessment order and the order of CIT(A) as well as grounds raised. We noted that the assessee is an individual and is engaged in commission agency business of agricultural produce and earning income as commission agent. The AO noticed that the assessee has filed his return of income on 27.11.2018 admitting taxable income at Rs.2,84,824/-. During scrutiny assessment proceedings, the AO noticed that the assessee carried on business and total credit comes to Rs.1,58,01,195/- after deducting sweep transfer out of total credit in bank account at Rs.3,28,51,635/-. The AO computed the profit and gains of business on presumptive basis after applying the provision of section 44AD of the Act and assessed the net profit equal to 8% of the total credits of Rs.1,58,01,195/- and thereby added the estimated income at Rs.9,79,272/- and assessed total income at Rs.12,64,096/-. Aggrieved assessee preferred appeal before

CIT(A). The CIT(A) also confirmed the action of AO. Aggrieved, assessee is in appeal before the Tribunal.

3. The Id.counsel for the assessee before us only made submission that a reasonable profit estimate should be made as the provision of section 44AD of the Act does not applied commission agents of agricultural produce. The Id.counsel for the assessee specifically drew our attention to the provisions of Section 44AD(6)(iii) which reads as under:-

- (6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—
- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) a person earning income in the nature of commission or brokerage; or
 - (iii) a person carrying on any agency business.

However, Id.counsel stated that the net profit or agency commission earned by commission agents dealing in agricultural produce is at 2%. When these facts were confronted to Id. Senior DR, he could not controvert the above stated facts and position of law.

4. We noted that the legal position is very clear that profit rate as mentioned in the provisions of Section 44AD of the Act, cannot be applied to commission agents who are doing business of agency commission or earning commission income only in view of provisions of

Section 44AD(6)(iii) of the Act. Hence, as canvassed by Id.counsel for the assessee, a reasonable profit can be estimated. Accordingly, we estimate the profit at the rate of 4% of total credits determined by the AO at Rs.1,58,01,195/-, after deducting sweep transfers. The AO will recompute the income accordingly.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 8th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 8th April, 2022

RSR

आदेश की प्रतिलिपि अग्रहित/Copy to:

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