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T.C.A.No.15 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.15 of 2023

Commissioner of Income Tax,
Circle-3, Trichy.

.. Appellant

Vs.

Shri Srinivasan Devendran

.. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 12.10.2022 in I.T.A.No.2675/Chny/2019 on the file of the Income Tax Appellate Tribunal - "A" Bench, Chennai.

For appellant : Mrs.V.Pushpa

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JUDGMENT

This Tax Case Appeal is filed raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in upholding the order of the Commissioner of Income Tax (Appeals) estimating the income of the assessee at 4% of the turn-over on the basis of the earlier year assessment orders, when the assessee has not maintained the Books of Accounts and has not audited his accounts by a Chartered Accountant ?

2. Very briefly the facts are that the respondent/assessee was executing works contract for the State Public Works Department relating to road construction. The respondent-assessee had procured the work through Tender process and the payments are made by various State Government Departments and receipts are available and found in Form 26-AS under the Income Tax Act and TDS was deducted by the Government Departments. It is submitted that the respondent-assessee has not got his books audited and

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had furnished income of Rs.2.30 crores and added 3% on the turn-over and estimate was made, which had been followed for the previous years. Since the assessee had not maintained the Accounts, the income was estimated for the previous four years by the Assessing Officer, who proceeded to make and determine the income on the basis of the estimation by adding 8% to the income reported as per Section 44-AB of the Income Tax Act, resulting in enhancement of the income liable to tax.

3. Now, we find that the order in appeal, namely the order of the appellate authority, dated 12.10.2022 is primarily one relating to estimation and thus, essentially a question of fact. No question of law much less substantial question of law, arises for consideration in this case. To appreciate the same, it is relevant to extract the portion of the Tribunal's order:

"7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the assessee has justified for adopting 3% of receipts from civil

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contract as net profit by stating that his volume of work was more and due to heavy competitions, he could not get more profit in these kind of contract. In support of his contention, before the Assessing Officer, the assessee gave the details of the previous years' assessment completed which are as follows:

<i>S. No.</i>	<i>A.Y</i>	<i>Total turnover of the assessee</i>	<i>Profit percentage (%) declared by the assessee</i>	<i>Income declared by the assessee</i>	<i>Profit determined u/s 143(3)</i>
1	2015-16	41,81,21,750	3%	1,25,43,653	3%
2	2014-15	22,63,98,010	3%	67,91,940	3.50%
3	2013-14	14,07,09,573	4%	56,28,383	
4	2012-13	13,71,29,706	4%	54,85,188	

8. The assessment year under consideration is 2016-17. In the assessment year 2015-16, the assessee has estimated the net profit at 3% and the same was accepted by the Assessing Officer under Section 143(3) of the Act. In the assessment year 2014-15, the assessee has estimated the net profit at 3% and the Assessing Officer determined the net profit at 3.50% under section 143(3) of the Act.



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In the assessment year under consideration, the assessee has declared the net profit at 3% and the Assessing Officer has estimated the net profit at 8%. On appeal, the Id. CIT(A) scale it down to 4% without depreciation. We find that by referring to various case law and after considering earlier assessment years' estimation of the Assessing Officer, the Id. CIT(A) has reduced the net profit to 4%. Thus, we find no infirmity in the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue is dismissed."

4. The estimation is by way of 'best judgment assessment' and it has been consistently held that there is bound to be an element of guess work and there cannot be any rigid formula for estimation based on best Judgment, no interference is warranted unless and until it is shown that the estimation / best Judgment is palpably arbitrary or perverse.

5. In the circumstances, we do not find any reason to interfere with the findings of the Tribunal on estimation, which is essentially a question of fact/discretion, more so, in the absence of challenge to the estimate as being

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arbitrary or perverse.

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6. In view of the above conclusion, the Tax Case Appeal is dismissed.

There shall be no order as to costs.

(S.V.N., J) (M.S.Q., J)
10.01.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation : Yes/no

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To

1. Commissioner of Income Tax, Circle-3, Trichy.

2. The Registrar, Income Tax Appellate Tribunal, 'A' Bench, Chennai.

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S.VAIDYANATHAN, J

and

MOHAMMED SHAFFIQ, J

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