

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1076 OF 2007

The CIT, Mumbai City-20, Mumbai )..Appellant

Vs.

Smt.Sushila Chaturvedi )..Respondent

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Mr.R.Ashokan with Ms.Suchitra Kamble for the  
appellant.

Mr.Harnansingh Khalse for the respondent.

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Coram : F.I.Rebello & R.S.Mohite,JJ

Date : 18.03.2009.

P.C.

1. The substantial questions of law as enumerated  
in paragraph-4 of this appeal are as under :-

(a) The substantial question of law arises in the  
present appeal is regarding the correct  
interpretation of Sec.144 and Section 44AD and other  
provisions of the act and whether on the facts and  
in the circumstances of the case and in law, the  
Hon'ble Tribunal is right in reducing the estimated  
profit/income of the assessee to 6% as against 30%  
of the gross receipts as estimated by the assessing  
officer ?

(b) Whether the Tribunal erred in ignoring the fact  
that the Assessee had not declared closing balance  
of Rs.39,87,021/- in the books of account and the  
Assessing officer had estimated income @ 30% of  
gross receipt to cover this balance ?

(c) Whether order of the Tribunal is based on the  
facts on records ?

2. On perusal of the record, we find that cogent and logical reasons have been given by the ITAT for estimating the profit of the assessee at 6% of the gross receipts. The assessee was a Civil Contractor but since the turn over of the assessee was higher than Rs.40 lakhs, by virtue of the proviso to section 44-AD, the said section was not applicable to the assessee. Under section 44-AD in respect of a Civil Contractor whose income is less than Rs.40 lakhs, provision has been made for assessing estimated profit as 8% of gross receipts. Since the said section is not applicable to the assessee, there is a element of discretion available to the assessing officer which discretion has to be exercised in a logical and non arbitrary manner. We find that the ITAT has proceeded on the basis that a fixed rate of 2% of gross receipt is the tax deductible at source from all contractors big or small. The ITAT has held that this rate of TDS can be used to arrive at a reasonable estimated income and on this basis it has held that if 6% of gross receipts of the Contractor can be considered as his reasonable income, then his tax liability will be 1.8% in cases where tax rate is 30% i.e. for an individual and 2.1 % where tax rate is 35% i.e. for a firm, company etc. It is on such basis that estimated income has been fixed at 6% of gross receipts. In this view of the matter, we do not

find that the impugned order is illogical, unreasoned or arbitrary and in the facts of the case, we are not inclined to interfere. The questions of law therefore, would not arise and the appeal stands summarily dismissed.

(R.S.Mohite,J)

(F.I.Rebello,J)