

Mohd.Amzad, vs The Incometax Officer,

ID: F2J-C-2217 **Court:** Telangana High Court

Case: WRIT PETITION Nos.21351 & 21352 of 2006 **Date:** 2025-10-16

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Telangana High Court Mohd.Amzad, vs The Incometax Officer, on 16 October, 2025 Author: P.Sam Koshy Bench: P.Sam Koshy THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION Nos.21351 & 21352 of 2006

COMMON ORDER: (per the Hon'ble Sri Justice P.Sam Koshy) Heard Mr. A.V.A. Siva kartikeya, learned counsel, representing Mr. A.V. Krishna Koundinya, learned counsel for the petitioner, and Ms. Bokaro Sapna Reddy, learned Senior Standing Counsel for Income Tax Department for the respondents.

2. Since the issue involved in these writ petitions and the parties to the dispute also being the same, they are heard together and decided by way of this Common Order.

3. For convenience, the facts in Writ Petition No.21351 of 2006 are discussed hereunder.

4. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order dated 03.12.2004, passed by respondent No.2 / The Chief Commissioner of Income Tax - VI, Hyderabad, in F.No.G.P.(14)/CIT-VI/Hyd/2004-05 and also the order dated 05.04.2005, passed by respondent No.3 / The Chief Page 2 of 10 Commissioner of Income Tax - II, Andhra Pradesh, Hyderabad, in No.CCIT-II/Tech/GP/19/2004-05.

5. The facts of the case in nutshell, are that, the petitioner is a retail dealer in timber and he is an assessee on the rolls of respondent No.1. For the assessment year 2003-04, he filed a return of income on 16.09.2003. Subsequent to the filing of returns, he claimed a refund of Rs.1,25,098/-. The claim was on the basis of provisions under Section 44AF of the Income Tax Act, 1961 (for short the 'Act of 1961') which is a special provision enacted for the purpose of computing the profits and gains of retail business.

6. In the instant case, the petitioner was not in a position to maintain books of accounts but had only the records of purchases made by him. In the course of submitting the returns, the petitioner had reflected total sales turnover by adding estimated gross profits of 20% and estimated his income at 5% of such turnover and offered an income of Rs.1,83,750/-. As Section 44AF of the Act of 1961 was introduced w.e.f. 01.04.1998, the petitioner claimed refund of Rs.1,25,098/- in accordance with the newly enacted provision of Section 44AF.

7. According to the petitioner, right from 1998-99 onwards, the petitioner has been submitting his returns keeping in view the Section 44AF and it was on that basis he had claimed for refund of income. The Page 3 of 10 Assessing Officer, however, vide order dated 13.12.2004 informed the petitioner that as the returns he has filed was a defective one; he would not be entitled for any refund. According to the Assessing Officer, the returns that the petitioner had submitted was not accompanied by any statement indicating the amount of turnover and also in respect of gross receipts etc., and therefore, unless proper rectified returns are not filed, it will be treated as non est. The petitioner accordingly made a request to the Department stating that he has not maintained any books of accounts, and hence, the estimated total sales figure at Rs.35,59,425/- could not be treated as a low figure. Finally, the Assessing Officer vide letter dated 14.09.2004 which was served upon the petitioner on 16.10.2004 informed the petitioner that the return of income is treated as invalid one denying the refund claimed by the petitioner on account of failure in complying the provisions of Section 139(9) of the Act of 1961.

8. Subsequently, the petitioner approached respondent Nos.2 and 3 both of whom vide orders dated 03.12.2004 and 05.04.2005 respectively rejected the application submitted by the petitioner for issuance of refund. The petitioner also preferred an appeal before the Commissioner of Income Tax (Appeals) - VI, in Appeal No. 0302/W-7(1)/Hyd/CIT(A)- VI/2004-05, which too, vide order dated 20.04.2005 was rejected on technicalities so far as its maintainability is concerned, which led to filing of the instant writ petition. Page 4 of 10

9. The contention of the learned counsel for the petitioner was that after introduction of Section 44AF, the provisions of Section 139(9) which was earlier being enforced was made applicable prior to the enactment of Section 44AF has lost its significance in respect of the category of persons upon whom the provisions of Section 44AF was made applicable. It was further contended that in the teeth of Section 139(9) being available in the statute, the fact that subsequently Section 44AF has also been introduced making it applicable upon a particular category of people in itself is sufficient indication of the non-applicability of Section 139(9) upon those categories of persons upon whom Section 44AF was introduced.

10. Learned counsel for the petitioner also relied upon the speech delivered by the Finance Minister in Parliament, wherein the Finance Minister clarified the scope of the benefits under Section 44AF, as well as the beneficiaries of the newly inserted provision and prayed for allowing of the writ petition and also quashment of the orders passed by respondent Nos.2 and 3 respectively, and also prayed for an appropriate direction to be given to the respondents to immediately take steps for refund of tax of the petitioner.

11. Per contra, the learned Senior Standing Counsel for Income Tax Department opposing the writ petition, drew the attention of the Court through the provisions of Section 139(9) and the explanation that is Page 5 of 10 provided under explanation (bb) and prayed for dismissal of the writ petition for the reason that the authorities have acted strictly in accordance with the provisions of law governing the field.

12. It was also the contention of the learned Senior Standing Counsel for Income Tax Department that the fact that the authorities in the course of scrutiny found the returns submitted by the petitioner to be defective and not supported with relevant documents and materials to substantiate the returns; under such circumstances, if the provisions of Section 139(9) of the Act of 1961 has been invoked the same cannot be found fault with.

13. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to appreciate the provisions of law which is the point for consideration in the instant case. For ready reference, the relevant portions of Section 44AF and Section 139(9) along with explanation (bb) to Section 139(9) are reproduced hereunder, viz., "44AF. Special provisions for computing profits and gains of retail business.

1) Notwithstanding anything to the contrary contained in sections 28 to 43-C, in the case of an assessee engaged in retail trade in any goods or merchandise, a sum equal to five per cent. of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of Page 6 of 10 income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that nothing contained in this sub-section shall apply in respect of an assessee whose total turnover exceeds an amount of forty lakh rupees in the previous year.

2) 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:

Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.

3) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

4) The provisions of sections 44-AA and 44-AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the total turnover or, as the case may be, the income from the said business shall be excluded.]"

139. Return of income.

xxx xxx xxx (9). Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within Page 7 of 10 such further period which, on an application made in this behalf, the assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return :

Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

Explanation.--For the purposes of this sub-section, a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely :--

(a) the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;

(aa) [***]

(b) the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;

(bb) the return is accompanied by the report of the audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;]"

Perusal of the aforesaid provisions of law indicates that Section 139(9) is a provision under the Act of 1961 which was inserted w.e.f. Page 8 of 10 01.04.1988. At the same time, Section 44AF is that provision of law which has been inserted in the Act of 1961 w.e.f. 01.04.1998. In spite of the fact that provisions of Section 139(9) with explanation (bb) already being in existence in the statute and Section 44AF being inserted only w.e.f. 01.04.1998, apparently reflects of it having been inserted to benefit a particular section of the society without Section 139(9) being omitted. This also gives an indication that Section 44AF being a special provision of law, always would have an overriding effect and if a person has availed the benefits enshrined under Section 44AF, the requirement for compliance under Section 139(9) would not arise at all.

14. So far as invoking Section 44AF is concerned, reading of the statute would show that the said provision does not require compliance as was mandated under Section 139(9) prior to the coming into force of Section 44AF w.e.f. 01.04.1998.

15. To further clarify the aforesaid opinion of this Court, it would also be relevant to take note of the contents of the speech made by the Finance Minister at the time of submitting the budget for the assessment year 1997-98. The relevant portion of the said speech is being reproduced hereunder, viz., "New estimated income scheme for computing profits and gains of retail traders In order to simplify the procedure of computation of income of retail traders, it is proposed to introduce a new scheme for computing Page 9 of 10 profits and gains of such businesses presumptively at five per cent. of the gross receipts. This scheme is similar to the presumptive schemes of computation of income under section 44AD and section 44AE.

88. with the same objective, I also propose to introduce a new Estimated Income Scheme for retail traders. The scheme will apply to persons engaged in the business of retail trade of any goods or merchandise having a total turnover of less than 40 lakhs. A trader with a turnover of less than 8 lakhs will stand exempted, given the present exemption limit. The income of the trader will be estimated at 5 per cent of the total turnover. Assessee who file a return showing income less than 5% of turnover will be required to maintain books of account and get their accounts audited."

16. In view of the aforesaid statutory provision of Section 44AF of the Act of 1961 and the petitioner falling within the category defined under the said Section 44AF, we are of the considered opinion that the view and stand expressed by the respondents is improper, illegal and unjustified. The impugned orders under challenge to the aforesaid extent deserves to be and are accordingly set aside / quashed and it is held that the petitioner would be entitled for refund of an amount of Rs.1,25,098/-. Let the respondents take appropriate steps in ensuring the refund of tax without any further delay, preferably within a period of ninety (90) days from the date of receipt of a certified copy of this order. The writ petition accordingly stands allowed.

17. Consequently, Writ Petition No.21352 of 2006 also stands allowed. Page 10 of 10

18. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs. _____ P.SAM
KOSHY, J _____ NARSING RAO NANDIKONDA, J Date: 16.10.2025 GSD