
(2010) 07 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 90 of 2010

Aggarwal Construction Co.	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 145(3), 260A, 32, 80IB

Citation : (2011) 198 TAXMAN 476

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Assessee u/s 260A of the income tax Act, 1961 (in short, "the Act") against

the order dated 15-5-2009 passed by the income tax Appellate Tribunal, Chandigarh Bench "B", (hereinafter referred to as "the Tribunal") in ITA

No. 508/Chd./2007 on the ground of perversity of finding in upholding assessment of income at 11 per cent net profit rate on the gross receipts for

the assessment year 2003-04 proposing to raise the following substantial questions of law:

I. Whether on the facts and circumstances of the case the ITAT was not justified in allowing partial relief by confirming the net rate of profit at 11

per cent as against 12 per cent as applied by the authorities below without appreciating the past history as supported by the stand of the revenue

through its Sr. DR while arguing the case before it?

II. Whether on the facts and in the circumstances of the case the income tax Appellate Tribunal was not justified in not adjudicating and thereby

denying the claim of depreciation to the Appellant u/s 32 of the income tax Act, 1961 which though is allowable in view of trite law that in cases of

application of net profit rate legal deductions like depreciation, interest, salary and interest to the partners are allowable deductions?

III. Whether, on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law?

IV. Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue for

claiming deduction u/s 80-IB of the income tax Act, 1961?

2. The Assessee declared gross receipts of Rs. 1,22,28,341 and income at Rs. 12,22,834.10 which worked out to be 10 per cent of the

assessable receipts. After claiming certain deductions, the net taxable income was depicted as Rs. 6,67,612. During the course of assessment

proceedings, the Assessee was asked to produce the books of account as well as details of the expenses. However, the books of account which

were produced were found to be containing only some particulars and were not regular books of account. The details of the expenses claimed to

have been incurred were not produced and the stand taken was that the relevant records were untraceable as the Managing Partner had died. The

Assessing Officer after rejecting the books of account made assessment by applying 12 per cent rate of net profit on the gross receipts in the

income tax returns. On appeal, the said rate was upheld. On further appeal to the Tribunal, the rate was reduced to 11 per cent without the same

being quoted as a precedent. The Tribunal observed as under:

...The Assessee showed the gross receipts of Rs. 1,22,28,341 and worked out the income at Rs. 12,22,834 which is exactly 10 per cent of the

assessable receipts. During assessment proceedings, the Assessee was asked to produce the books of account as well as details of expenses

supported by bills and vouchers. The Assessee was also asked to intimate the justification for applying rate of 10 per cent on the gross receipts.

The claim of the Assessee is that no regular books of account have been maintained by the Assessee. Even vide its reply, during assessment

proceedings the Assessee admitted that it did not maintain regular books of account but only a ledger type books has been maintained. The said

ledger type book was produced by the Assessee before the learned Assessing Officer wherein it was found that it was only containing the details

like partner's capital account, partners current account withdrawals and credit on account of salary interest and profit tools and plant accounts

having entry of opening balance and depreciation claimed figures only assessable receipts and TDS accounts but without and date or particulars

and photocopy of bank account statement only. As per the Revenue, the Assessee did not file any details of expenses incurred and merely claimed

that the expenses vouchers and other relevant records is untraceable as the managing partner Shri Pawan Kumar Jain had expired and admitted

that the record cannot be produced. The learned Assessing Officer, rejected the books of account by resorting the provisions of Section 145(3)

and applied the rate of 12 per cent of the contract receipt shown in the return of income, for working out the taxable income of the Assessee which

worked out to Rs. 14,67,400 (being 12 per cent of Rs. 1,22,28,341). Now the moot question is whether 10 per cent is to be applied or 12 per

cent of the receipts. Admittedly, the Assessee calculated its income by applying 10 per cent of the total receipts. There is no dispute to the fact that

on earlier occasion the department accepted 8 per cent to 10 per cent of the receipts. In para 5 of the impugned order, it has been specifically

mentioned that in the past, the flat rate of 10 per cent on the gross receipts was applied as the books of account were rejected. If this reasoning is

applied to the present appeal, even if we presume that no books are maintained or if maintained are not to the satisfaction of the learned Assessing

Officer, still the net result is that the books are not reliable but fact remains that the Assessee at one hand claiming that one register was maintained

and on the other hand did not produce the relevant bills and vouchers on the basis of which the said register was maintained. Without going into

much deliberation and to put an end to the litigation we restrict the rate to 11 per cent in place of 12 per cent adopted by the Assessing Officer and

uphold by the learned first appellate authority. However, we are making it clear that this adoption of 11 per cent may not be quoted as a precedent

as each year is independent, consequently this appeal of the Assessee is partly allowed.

3. We have heard the learned Counsel for the Appellant.

4. The contention raised on behalf of the Appellant is that even if the books of account were rejected, the rate of 11 per cent applied by the

Tribunal was excessive. It should not have been more than 10 per cent.

5. Learned Counsel for the Appellant also submitted that the question regarding depreciation was raised but the Tribunal had not adjudicated upon

the same.

6. We are unable to accept the submission. There is nothing to show that regular books of account were maintained. In absence therefore,

assessment had to be made on a reasonable basis having regard to over all fact situation. The rate to be applied for determining income in a given

fact situation is a question of fact and interference by this Court is permissible in such a case only on the ground of perversity. In the present case,

we are unable to hold the finding of the Tribunal to be perverse.

7. The Assessing Officer had declined the claim of the Assessee regarding depreciation with the observations that the Assessee was unable to give

any detailed chart of tools and machinery and in their absence, it could not be established that the tools and machinery were wholly or partly

owned by the Assessee and used for the purposes of business. This was confirmed by the CIT(A). Further, nothing could be shown that any claim

was made regarding depreciation before the Tribunal as has been sought to be raised for the first time in this Court or that the observations of the

Assessing Officer and the first appellate authority are erroneous or perverse in any manner. Thus, no substantial question of law arises.

8. The appeal is dismissed.