
(2010) 12 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No"s. 449, 457 and 478 of 2006

Aggarwal Engineering Company

APPELLANT

Vs

Asstt. CIT

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Income Tax Act, 1961 — Section 148, 251(I), 263, 44AD

Citation : (2011) 336 ITR 332

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

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. This order shall dispose of Income Tax Appeal Nos. 449, 457 and 478 of 2006 as common questions of law and facts are involved therein. For brevity, the facts are being extracted from Income Tax Appeal No. 478 of 2006.

2. This Court vide order dt. 21-8-2007 while admitting the appeal had framed the following substantial questions of law for determination by this Court:

(i) Whether on the facts and circumstances of the case, the decision of the Tribunal upholding the net profit rate at 13 per cent of the total contract receipts (as compared to 8 per cent fixed u/s 44AD) and 10 per cent assessed by assessing officer in reassessment proceedings and 8 per cent assessed in original proceedings, is perverse in nature and erroneous in law and, therefore, liable to be set aside ?

(ii) Whether the rate of 10 per cent applied by assessing officer and 13 per cent applied by the Commissioner (Appeal) and upheld by the Tribunal are arbitrary in nature, fixed on mere conjectures and surmises without any material on record ?

3. Put shortly the facts for adjudication as narrated in the appeal are that the Assessee is a partnership firm and is doing the business of civil construction. It filed its return on 4-7-1995 for the assessment year 1994-95 declaring an

income of Rs. 1,09,890. On 22-4-1997, the assessing officer issued notice u/s 148 of the IT Act, 1961 (in short the Act) for reassessment on the ground that the Appellant had received total payments of Rs. 27,42,891 and by applying a net profit rate of 8 per cent on the gross receipts provided in Section 44AD, the profit worked out to be Rs. 2,19,431 as against the returned income of Rs. 1,09,890 and had, therefore, escaped income of Rs. 1,09,541. In response to the reassessment notice, revised return was filed showing gross payments of Rs. 61,36,300 as against Rs. 27,42,891 shown in the original return. Against the original returned income of Rs. 1,09,890, the Assessee filed return showing an income of Rs. 3,94,900. Accordingly, the assessing officer accepted the return of income wherein the receipts were shown applying the net profit rate of 8 per cent. The CIT, Jalandhar while exercising the powers u/s 263 of the Act vide order dt. 18th Nov., 1999 set aside the order of the assessing officer and directed that the assessment be made after a detailed investigation including the details of expenditure incurred as per trading account originally filed and admissibility of claim of interest paid to the partners. Thereafter, the assessing officer vide order dt. 30th March, 2001 applied a net profit rate of 10 per cent on the total receipts against the rate of 8 per cent shown by the Assessee. Feeling aggrieved, the Assessee took the matter in appeal only to the extent of rate of profit at 10 per cent against the rate of 8 per cent before the Commissioner of income tax (Appeals) [in short the CIT(A)]. The CIT(A) not only upheld the order of the ASSESSING OFFICER but enhanced the rate of net profit from 10 per cent to 13 per cent. Accordingly, the income of the Assessee was enhanced by Rs. 1,84,089. On further appeal by the Assessee, the Tribunal vide order dt. 16th Dec, 2005 upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the Assessee.

4. We have heard learned Counsel for the parties.

5. The assessing officer had applied the net profit rate of 10 per cent which was enhanced by the CIT(A) to 13 per cent. The Tribunal had upheld the applicability of 13 per cent rate of net profit. However, a perusal of the order of CIT(A) does not show that how this net profit rate of 13 per cent has been arrived at. The finding recorded by the CIT(A) reads thus:

2.2 It was the case of the on the other hand that in the subsequent assessment years i.e., 1995-96 and 1996-97, the income was enhanced by applying net profit rate of 13 per cent by the undersigned on the total receipts declared by the Assessee as fair and reasonable. It was thus mentioned by the assessing officer that following the judgment therein the enhancement @ 3 per cent in the net profit on the total receipt may kindly be effected to bring it at par to the net profit rate as applied in subsequent years.

2.3 After considering the submissions from both the sides, I find that the receipts for the year as declared in the revised return take the case out of the purview of Section 44AD. It was a case where neither any books were maintained nor any vouchers were produced. Therefore, application of net profit rate 8 per cent is

ruled out and in this regard. I do not find merits in submissions of Appellant. By applying said rate in reasons to believe the assessing officer worked out though income of Rs. 1,09,541 having escaped assessment because at that time the receipts as per TDS certificates were below Rs 40 lacs but Appellant filed return with receipts exceeding Rs. 40 lacs thus ruling out application at rate of 8 per cent. The facts for the years i.e., assessment year 1995-96 and 1996-97, Appellant was asked as to why the net profit rate be not applied to results of the year as applied in the succeeding years and the income be not enhanced in view of Section 251(1)(a) of IT Act.

2.4 The learned Authorised Representative for Appellant chose to rely on the decision of Hon'ble Tribunal, Amritsar Bench in ITA No. 733/Asr/1990, dt. 28th April, 1999 and mentioned that in view of reasons recorded, the results declared by the Assessee at the most were subject to application of net profit rate of 8 per cent.

2.5 The submissions of the Appellant are considered in light of facts in subsequent assessment years i.e., 1995-96 and 1996-97 decided vide Appeal Nos. 58-59/2002-03/CIT(A) Jal dt. 26-2-2003. The facts of the year are more or less similar to the facts in those years as in the relevant year there were no books of accounts while in succeeding years, the books of accounts were not at all reliable. The decision of Hon'ble jurisdictional Tribunal relied upon by the Appellant have been distinguished in the appellate orders dt. 26-2-2003 (supra) and following the decision therein, the net profit rate of 13 per cent is applied to the receipts declared by the Appellant which results in enhancement of income to the extent of Rs. 1,84,089.

6. The aforesaid finding was affirmed by the Tribunal. The Tribunal in para 5 of its order had recorded as under:

5. On consideration of the above facts and the circumstances, we are of the view that the matter in detail has been considered by this Tribunal in the subsequent assessment year 1995-96 and 1996-97 vide order dt. 22-8-2005 in which the order of the Commissioner (Appeal) was confirmed for the two years and enhancement was confirmed. The relevant paras 22 and 23 are reproduced as under:

22. Now we take up the Assessee's appeal. The Assessee challenged the application of net profit of 13 per cent as enhanced by the Commissioner (Appeal). It is an admitted fact that the books of accounts of the Assessee are not reliable. Same were, therefore, rightly rejected by the authorities below. In the asst. yr. 1994-95, the Assessee has accepted and applied the net profit rate of 10 per cent. The Assessee in the original return concealed substantial receipts from the Revenue Department and again with the assessing officer as per books of accounts of the Assessee filed revised return showing the receipts but even proper receipts were not shown, therefore, the return was further revised on 26-6-1997 and gross receipts were shown at Rs. 71,54,922. The Commissioner

(Appeal) considered the facts of the case and bogus entries made on account of cash credits itself on the bank withdrawals and the entries made in the books of the Assessee was of the view that it is a fit case for enhancement of the income. The Commissioner (Appeal) considering the totality and the circumstances enhanced the net profit rate from 10 per cent as applied by the assessing officer to 13 per cent. The learned Counsel for the Assessee tried to justify that in another case net profit rate is applied from 8 per cent to 10 per cent but in his own case in the assessment year 1997-98 the net profit rate of 10 per cent was confirmed by the earlier Bench of the Tribunal, Amritsar. Considering the above facts, we are of the view that there is no hard and fast rule as regards application of net profit rate. It depends upon the facts of each case considering the totality of the facts and the circumstances. May be in other cases lesser gross profit rate is applied but it is a fact that in the preceding assessment year the Assessee himself declared and accepted the net profit rate of 10 per cent, as is observed by the assessing officer in the assessment order.

23. The facts of the case, as noted above, show that the Assessee concealed the gross receipts from the Department and accordingly manipulated the entries in the books of accounts and further, some of the payments made for purchases were not accounted for in the books of accounts. Therefore, it was a fit case for enhancement of the income of the Assessee. The CIT(A) rightly exercised the jurisdiction in view of the peculiar facts of the case. Nothing is pointed out to us that similar were the facts in the asst. yr. 1997-98 in the case of the same Assessee or in other years. It is also not pointed out that in the orders referred to by the learned Counsel for the Assessee, similar were the facts. Considering the above discussion, we are of the view that the CIT(A) has rightly enhanced the application of net profit rate from 10 per cent to 13 per cent. As a result, there is no merit in the appeal of the Assessee and same is also dismissed.

7. The aforesaid findings clearly show that both the appellate authorities had failed to discuss any material on the basis of which it could come to the conclusion that 13 per cent net profit rate was justified. In the absence of any reference to the material on record, there is no other option with this Court except to set aside the orders under appeal and remand the matter to the CIT(A) to examine the same afresh.

8. The substantial questions of law are answered accordingly and the orders impugned in the appeals are set aside. The matter is remitted to the CIT(A) for fresh decision on the basis of the material available on record, in accordance with law.

9. The appeals stand disposed of.

10. The parties through their counsel are directed to appear before the CIT(A) on 14th Feb., 2011 for further proceedings in accordance with law.