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(2001) 09 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Income Tax Reference No. 55 of 1998

Bharat Construction Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:
Income Tax Act, 1961 — Section 145, 40

Citation : (2002) 258 ITR 140

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : L.M. Lodha, for the Appellant; Sandeep Bhandawat, for the Respondent

Judgement

N.N. Mathur, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, u/s 256(1) of the Income Tax Act, 1961, has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in treating the claim of depreciation as covered in the rate of net profit applied by it ?"

2. The assessee-firm, carrying on construction business, had shown a net profit of 5.6 per cent. on total contract receipts of Rs. 64,30,344. As most of the expenses including the labour payments were unvouched, the assessing authority applied the provisions of Section 145 of the Income Tax Act, 1961, and determined the income of the assessee by applying a net profit rate of 8 per cent. on the total receipts. This resulted in a net addition of Rs. 1,36,444. The Commissioner of Income Tax (Appeals) gave relief of Rs. 36,000 and retained the addition to the extent of Rs. 1,00,444. It was contended before the Tribunal that in a construction business, whenever a net profit rate is applied, it is always subject to a further deduction of depreciation. The assessee relied upon some of the circulars of the Board clarifying to the same effect. It may be noticed that the assessing authority did not allow depreciation separately because in his view, if it

was so done, the net profit would fall to as low as 5.63 per cent. He, therefore, applied the rate of 8 per cent. The Commissioner of Income Tax (Appeals) brought down the net profit rate to 7.44 per cent. The Tribunal without giving any reason has simply brought down the rate to 7 per cent. As to how the Tribunal had dealt with the aspect is evident from the part of the order, which is extracted as follows :

"The Assessing Officer, therefore, raised the net profit rate from 5.63 per cent. to 8 per cent. After the relief given by the Commissioner of Income Tax (Appeals), the net profit rate comes to 7.44 per cent. and not below 6 per cent. as contended by the learned Departmental Representative. In the circumstances, we are of the view that if a net profit rate of 7 per cent. is applied, it would be fair and would meet the ends of justice. The net profit rate of 7 per cent. would also cover the allowance of depreciation and interest. No further deduction be allowed in respect of those two items. We direct accordingly."

3. Mr. Bhandawat, learned counsel for the Revenue, has tried to bank upon Section 40(b) of the Income Tax Act, 1961. In our view, Section 40(b) of the Act is not attracted in the instant case. The instant reference pertains to the assessment year 1992-93. The amendment of Section 40(b) of the Act by the Finance Act, 1992, came into effect from April 1, 1993. Thus, it applies in relation to the assessment year 1993-94.

4. In Commissioner of Income Tax Vs. Jain Construction Co. and Others, this court has taken a view that the Central Board of Direct Taxes has a power to issue circulars and they are binding on the Income Tax authorities. In the instant case, the Tribunal has not taken into consideration the circulars of the Central Board of Direct Taxes and simply ordered that the net profit rate of 7 per cent. will cover the allowance of depreciation and interest. In our opinion, the Tribunal was wrong in treating the claim of depreciation as covered in the rate of net profit of 7 per cent.

5. The reference is, accordingly, answered and returned to the Income Tax Appellate Tribunal, Jaipur Bench, to decide the appeal afresh after giving an opportunity of hearing to the assesses as well as the Revenue Department in the light of the law laid down in Commissioner of Income Tax Vs. Jain Construction Co. and Others,

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