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(2015) 05 DEL CK 0365

In the Delhi High Court

Case No : ITA 317 of 2015

Commissioner of Income Tax-21 APPELLANT

Vs

Rajender Singh RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:
Income Tax Act, 1961 — Section 133(6), 145(3), 260A

Citation : (2015) 05 DEL CK 0365

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Suruchi Aggarwal, Senior Standing Counsel, Lakshmi Gurung and Abhishek Sharma, for the Appellant

Judgement

1. The ITAT''s order impugned in the present appeal by the revenue under Section 260A of the Income Tax Act, 1961 confirmed the order of the CIT(A). The A 0 had contrary to the assessee''s case, rejected the books of account and assessed the income at Rs. 1,17,92,350/-.

2. The assessee was engaged in the construction business and claimed various expenses as well as credits. In the course of assessment, the A 0 issued notices under Section 133(6). The said parties did not respond. The amounts claimed against them were added and the A 0 proceeded to reject the books of accounts and apply the net profit rate of 5% of gross receipts. The CIT(Appeals), after considering the submissions of the parties held as follows :

"It is noted that the appellant filed the copies of account books of the appellant on the demand of the Assessing Officer and filed the confirmations of the building material suppliers who furnished their addresses and PANS. The appellant had made payments against the purchases invariably by means of account payee cheques to the building material suppliers. Further the wages were supported by muster rolls wherein the recipients of the wages had acknowledged their receipts of wages. I have also observed the comparable case of Shri Mukesh Kumar Sharma who had disclosed net profit rate of 1.I % on contract receipts of Rs.

4,50,86,832 for the assessment year 2008-09, where the Assessing Officer applied net profit rate of 8% on contract receipts for the assessment year 2008-09. However, in appeal the net profit rate of 1.3% was upheld. It is noted that there was a substantial increase in contract receipts for this year as compared with the net contract receipts in each of the preceding two years. Similarly, the net business profit shown is much better as compared with the net business profits for each of the preceding two years. The few and short objections listed by the Assessing Officer in the assessment Order have been effectively answered by the appellant in his detailed submission. The Assessing Officer has not pointed out any discrepancies and infirmities in the account books of the appellant. In view of the facts and circumstances of the case and judicial pronouncements relied upon by the appellant, the Assessing Officer was not justified in rejecting the books of accounts by applying section 145(3) of the IT Act and estimating Net Profit @ 5% of the Gross Receipts. It is not Proper on the Part of the Assessing Officer to apply ad hoc and arbitrary net profit rate of 5% on contract receipts for this year and to make addition of Rs. 74,92,760 in the business profit of Rs. 43,63,846 shown by the appellant without referring to any comparable case in the matter. Keeping all the factors in mind the net profit is estimated @ 2% i.e., 45,02,424/-. The appellant has already disclosed N.P @ 1.94% i.e. 43,63,846/-. Therefore, the difference amount of.06% is sustained i.e. Rs. 1,38,578/-. Appeal on these grounds is partly allowed."

3. The ITAT went through the records, including the finding of the CIT(Appea1s) that no rationale was shown for estimating the net profit @ 5% and that the evidence of supplies were otherwise forthcoming. In these circumstances, the ITAT refused to interfere after knowing that the net profit rate had been reduced by the CIT(Appea1s). This Court holds that no substantial question of law exists. The appeal is therefore dismissed.

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