
(2002) 01 RAJ CK 0094
In the Rajasthan High Court
Case No : Income Tax Appeal No. 60 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Bhawan and Path Nirman Bohra and Co.

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2002) 258 ITR 676

Hon'ble Judges : N.N. Mathur, J; Jagat Singh, J

Bench : Division Bench

Advocate : Sundeep Bhandawat, for the Appellant; Anjay Kothari, for the Respondent

Final Decision : Dismissed

Judgement

1. This is appeal u/s 260A of the Income Tax Act, 1961, directed against the judgment of the Income Tax Appellate Tribunal, Jodhpur, dated November 24, 2000.

2. We have heard Mr. Sundeep Bhandawat, learned counsel for the Revenue, and Mr. Anjay Kothari, for the respondent-assessee, for the purpose of admission of the appeal.

3. The respondent-assessee firm is a civil contractor. It filed return of receipts of Rs. 1,63,86,523 giving a net profit rate of 8.10 per cent. In view of various defects noticed in the books of account, the Assessing Officer rejected the book results declared by the assessee and invoked the provisions of Section 145 by applying the net profit rate of 12.5 per cent. and made trading addition of Rs. 7,36,107. The Commissioner of Income Tax (Appeals), on appeal by the assessee reduced the net profit rate from 12.5 per cent. to 10 per cent. as in his opinion the estimated net profit rate of 12.5 per cent. was excessive. On appeal by the Department the Tribunal examined the issue with respect to estimate of net profit in depth and detail, and confirmed the order of the Commissioner

(Appeals).

4. It is contended by Mr. Bhandawat, learned counsel for the Department, that the Tribunal having held that the books of account were rightly rejected by the Assessing Officer which was confirmed by the Commissioner of Income Tax (Appeals) committed an error in reducing the rate of net profit from 12.5 per cent. to 10 per cent. without assigning any good reasons. Learned counsel has placed reliance on a decision of the apex court reported in Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad, , and a judgment of the Kerala High Court in Commissioner of Income Tax Vs. Nirmala Liquors, . On the other hand, Mr. Kothari, learned counsel appearing for the respondent, submits that the instant appeal is not maintainable as no substantial question of law is involved as required by Section 260A of the Income Tax Act. It is also submitted that the case does not fall in any of the parameters laid down by this court in Deputy Deputy Commissioner of Income Tax Vs. Marudhar Hotels (P.) Ltd.,

5. We have carefully gone through the judgment of the Tribunal. We are not impressed with the contention of Mr. Bhandawat, to the effect that no reasons have been assigned by the Tribunal for confirming the finding of the Tribunal for reducing the net profit rate from 12 per cent. to 10 per cent. Detailed reasons have been given in para. 5 of the judgment of the Tribunal, which are extracted as follows :

"(a) Most of the new contracts taken this year had been taken under keen, competition from leading other contractors, and the policy of business was also changed to have less margin of profit, greater net returns, so that the available machinery which in absence of work, remained idle, is put to use regularly and continuously. The rise of net receipts, as compared to the preceding year is Rs. (in net) 72,06,237, which as compared to the last year's total net of Rs. 85,22,465 is almost say double, with little marginal difference. The profit in work account last year was Rs. 9,30,350. This year this profit in work account is Rs. 12,24,627.

There had thus been an overall addition of more than Rs. 3,00,000 to this profit, with the same staff and facilities. The net profit last year was nil. It was a loss of Rs. 24,427 as against which this is plus (profit) of Rs. 18,642.

(b) When tenders are given the current market rate of all the material taken into account. It is generally known factor that during the previous year relevant to the assessment year 1990-91, there had been unexpected and steep rise in the general trend of price level in the country. This was beyond expectations right from rations to petrol, diesel, parts, everything did show an upward trend and so also the labour and this factor did cut down the profits of the assessee-firm to a greater extent.

(c) It will be necessary to say that in general, i.e., in so far as the trading of the firm is concerned it has shown better performance as will be revealed from the

following capital invested yield ratio chart."

6. As far as the judgment of the apex court reported in Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad, , is concerned the same does not relate to estimation of net profit and as such it has no application to the facts of the case. The Kerala case Commissioner of Income Tax Vs. Nirmala Liquors, only speaks that the question of estimation of net profit involves a question of law. In Deputy Commissioner of Income Tax Vs. Marudhar Hotels (P.) Ltd., it is held by the Division Bench of this court that simply because a question of law is involved, Section 260A is not attracted, as an appeal lies only on a substantial question of law.

7. Thus, in our opinion, no substantial question of law is involved in this appeal. The appeal is dismissed summarily.