(2009) 01 RAJ CK 0114

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

G.K. Contractor RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 145, 260A, 68

Citation : (2009) 01 RAJ CK 0114

Hon'ble Judges : Sangeet Raj Lodha, J;Arvind Mohanlal Kapadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act of 1961") is directed against order dated 30-7-2008 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as Tribunal) in ITA No. 906/Jd/2007 in respect of the assessment year 2004-05, whereby the appeal preferred by the revenue against the order dated 23-10-2007 passed by the Commissioner (Appeals), Bikaner (hereinafter referred to as "Commissioner (Appeal)" hereinafter), inter alia, deleting the addition of Rs. 38,28,086 made by the assessing officer u/s 68 of the Act of 1961, stands dismissed.

2. The relevant facts in nutshell are that the assessee, a partnership firm derives income from execution of civil contract undertaken from the Railways and Garrison Engineer. During the relevant assessment year, the assessee executed civil contracts of Rs. 1,94,49,548. The assessing officer rejected the books of account produced by the assessee invoking the power u/s 145(3) of the Act of 1961. After rejection of the books of account, the assessing officer vide order dated 30-11-2006 estimated the net profit @ 12 per cent of the total gross receipts subject to the allowable interest and remuneration to the partners. The assessing officer also made an addition of Rs. 38,28,086 on account of unexplained cash credit.

3. Aggrieved by the assessment order dated 30-11-2006, the assessee preferred an appeal before the Commissioner (Appeals). After due consideration of the material on record, Commissioner (Appeals) directed the assessing officer to apply net profit rate of 9 per cent of gross contract receipts subject to allowance of bank interest, depreciation, interest and remuneration to the partners. The Commissioner (Appeals) arrived at the finding that the estimated net profit having been arrived at after rejection of the books of account, the addition made on account of unexplained cash credit u/s 68 of the Act of 1961 is not justified. Accordingly, the addition of Rs. 38,28,086 made by the assessing officer as aforesaid was ordered to be deleted.

4. On further appeal by the revenue, the Tribunal after due consideration of the facts and in the circumstances declined to interfere with the order passed by the Commissioner (Appeals) estimating the net profit @ 9 per cent of the total contract receipts. The Tribunal further opined that no separate additions can be made u/s 68 of the Act of 1961 in case of profits estimated by applying a higher profit rate after rejecting the books of account. Accordingly, the order passed by the Commissioner (Appeals) has been confirmed by the Tribunal on both the counts.

5. It is contended by the learned Counsel for the appellant that the Tribunal has seriously erred in holding that when the books of account are rejected and profit is estimated, no additions on account of unexplained cash credits can be made u/s 68 of the Act of 1961. The learned Counsel submitted that the provisions of Section 145 and Section 68 are mutually exclusive and if the assessee fails to discharge the burden of explaining the cash credit, the additions can always be made by the assessing officer.

6. We have considered the submissions of the learned Counsel for the revenue and also perused the various orders placed on record.

7. Admittedly, the said amount of Rs. 38,28,086 was shown by the assessee in the books of account as "market outstanding". According to the assessee, the payment was outstanding against the labour and goods supplied. It is true that on being asked, the assessee was not able to explain these entries by producing the adequate proof to the satisfaction of the assessing officer. However, in our considered opinion, even if the assessee has failed to discharge his onus of proof in explaining the cash credits shown in the books of account as "market outstanding", the assessing officer having estimated the higher profit rate on total contract receipts after rejection of the books of account invoking the provisions of Section 145(3), no separate additions can be made on account of unexplained cash credit u/s 68 of the Act of 1961. We are in complete agreement with the view taken by the Commissioner (Appeals), confirmed by the Tribunal. Thus, no substantial question of law arises for consideration of this Court in this appeal.

8. In the result, the appeal fails, it is hereby dismissed. No order as to costs.