
(2014) 08 RAJ CK 0010

In the Rajasthan High Court

Case No : Income Tax Appeal No. 59 of 2014

Commissioner of Income Tax

APPELLANT

Vs

Gupta, K.N. Construction Co.

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Income Tax Act, 1961 — Section 13, 145, 145(3), 260A

Citation : (2015) 371 ITR 325

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Praveen Verma, Asst. CIT, Advocates for the Appellant

Judgement

J.K. Ranka, J.—The instant appeal under section 260A of the Income-tax Act, 1961 (for short "the Act"), is directed against the order of the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (for short "the ITAT"), dated January 30, 2014, passed in I.T.A. No. 583/JP/2012 relating to the assessment year 2009-10. Brief facts which have been noticed from the impugned order and other material on record are that the respondent-assessee being a partnership firm is engaged in the business of civil contractor and has furnished his income-tax return for the above assessment year under appeal along with the audit report and other information. The respondent-assessee declared a total contract work at Rs. 12,32,57,523 declaring a net profit rate of 5.38 per cent subject to interest and remuneration to the partners. On a perusal of the order, it is noticed that the net profit rate in the immediate preceding assessment year, i.e., the assessment year 2008-09 was 5.02 per cent.

2. During the course of the assessment proceedings, the respondent-assessee was directed to provide material to justify the expenses claimed in the profit and loss account vis-a-vis receipts and a number of queries were raised. The assessee appears to have replied to the various queries raised by the Assessing Officer and it was admitted that the nature of work of the assessee is fully unorganised and that the work is carried out at various sites, where he could not

maintain a proper system of accounting. It was also admitted by the assessee that the accounting work was conducted by the labour supervisor, who was also promoted from amongst labourers and did not have a knowledge of accounting and was unable to maintain coordination between assessee and suppliers and those sites. It was further submitted that the turnover and the net profit rate is better vis-a-vis the last five preceding years and, therefore, the book results should be accepted.

3. However, the Assessing Officer was dissatisfied with the explanation offered by the assessee and not only invoked the provisions of section 145 of the Act and rejected the book results but he further disallowed the expenses to the tune of Rs. 1,17,75,202 out of the major heads of the expenses, namely, out of purchases of Rs. 7,50,39,180 disallowed at 20 per cent, out of labour charges of Rs. 3,72,48,425 disallowed 10 per cent, out of salary to the tune of Rs. 9,48,000 disallowed 20 per cent, out of vehicle expenses of Rs. 69,850 disallowed 20 per cent, out of vehicle charges of Rs. 69,850 disallowed 20 per cent, out of water charges of Rs. 49,252 disallowed 20 per cent, out of welfare expenses of Rs. 16,245 disallowed 20 per cent, out of vehicle insurance of Rs. 17,190 disallowed 20 per cent, and out of other deduction of Rs. 12,90,245 disallowed Rs. 2,68,219. Thus, the Assessing Officer in effect by disallowing Rs. 1,17,75,202 determined the net profit at 13.7 per cent.

4. Dissatisfied with the addition of Rs. 1,17,75,202 an appeal was preferred before the Commissioner of Income-tax (Appeals) (for short "the CIT(A)), before whom detailed explanation was offered and the Commissioner of Income-tax (Appeals), after considering the facts on record, was of the view that the provisions of section 145(3) have rightly been invoked as various defects have been noticed by the Assessing Officer and the assessee has not been able to give satisfactory explanation with regard to the deficiencies noticed by the Assessing Officer. The Commissioner of Income-tax (Appeals) was also of the view that the results of the assessee are to be compared alone and in view of the past history, where the Tribunal in the case of the assessee itself applied the rate of 5 per cent, therefore, the Commissioner of Income-tax (Appeals), under such circumstances, sustained and ad hoc addition of Rs. 10 lakhs on account of possible leakage of income of profit and the appellant and deleted the balance addition.

5. Aggrieved by the order of the Commissioner of Income-tax (Appeals), both the parties preferred separate appeals before the Income-tax Appellate Tribunal. The learned Tribunal, after analysing the evidence on record and the fact that in the immediate past assessment years in the case of assessee itself, it was repeatedly held by the Tribunal that the rate of 5 per cent is reasonable and since in the present year though the net profit rate of 5.38 per cent had been shown but still sustained an ad hoc addition of Rs. 5 lakhs as against Rs. 10 lakhs made by the Commissioner of Income-tax (Appeals). It is the deletion of an addition of about Rs. 1.12 crores, which has been assailed before us by the

Revenue.

6. Mr. Praveen Verma, Assistant Commissioner of Income-tax, appearing on behalf of the Revenue, submitted that in the instant case several queries were raised and the assessee was unable to produce the vouchers and/or relevant information to substantiate the claim made in the profit and loss account. He contended that though the results shown may be technically said to be better in comparison to the past years but when the very vouchers have not been produced, therefore, mere acceptance in the past years cannot be a ground not to make addition in the subsequent years like the present one, where the assessee failed to substantiate the expenses claimed. He further submitted that if the said analogy is accepted then in all such cases, where there is slight rise in the very trading result or results are almost similar vis-a-vis in the past year then the addition can never be made. He contended that the order of the Assessing officer was well reasoned one and substantial question of law arises out of the said impugned order, therefore, the appeal deserves to be admitted.

7. We have considered the submissions of the officer appearing on behalf of the Revenue and have perused the impugned order so also the orders of the lower authorities.

8. In our view, no substantial question of law can be said to arise out of the impugned order as it is essentially a finding of fact by the two appellate authorities. It is admitted fact that the provisions of section 145(3) of the Act have rightly been invoked by the Assessing Officer so also upheld by the appellate authorities but in a case where the provisions of section 145(3) are invoked, one has to consider either the past history of the assessee or history of similarly situated other businessmen/traders. However, on a perusal of the assessment order, we notice that the Assessing Officer is absolutely silent as to justifying the net profit rate to the extent of 13.7 per cent whether the addition/disallowance made by the Assessing Officer can be said to be appropriate. The assessment order is totally silent about similarly situated other traders/businessmen showing the net profit over and above what the assessee had shown and compared by the Assessing Officer and no evidence has been brought on record as to how the Assessing Officer was justified in applying the net profit rate at 13.7 per cent. In our view, while comparing with the past history, if the results are fair and reasonable then invariably no addition need to be made. It would be appropriate to reproduce the trading results of the assessee for the year under appeal including the last five years, which reads as under:

9. On a perusal of the above, it is apparent that out of the past five assessment years in three of the assessment years, i.e., 2004-05, 2005-06, 2006-07, the matter travelled up to the stage of the Tribunal where the Tribunal applied the rate of 5 per cent. Compared with the said fact, in the present assessment year though the contract receipts have sharply increased from Rs. 10.60 crores to Rs. 12.32 crores in the immediate past assessment year at the same time the net profit has increased from 5.02 per cent to 5.38 per cent or now as per the order

of the Tribunal it can be said to be raised at 5.78 per cent with the addition of Rs. 5 lakhs sustained.

10. Though the argument of the learned officer of the Revenue can be said to be proper and justified that in a case where the assessee manipulates the accounts by keeping the profit margins commensurate with the past assessment years or slightly increases and that itself by a large cannot be a basis for acceptance of the results. But, in the face of the said facts, if it is for the Assessing Officer to bring on record some concrete material/evidence to make a proper addition. We have already noticed hereinabove that the Assessing Officer has merely disallowed 20 per cent or 10 per cent, as the case may be, out of the various expenses, which, in our view, is not proper and he had to bring on record justifiable basis for making of an addition and bring on record some evidence for making of addition.

11. The hon"ble apex court as well as this court had held that invoking of the provisions of section 145(3) and/or estimation of income by itself is a finding of fact and it would be appropriate to refer to a few judgments in this regards.

12. The hon"ble apex court in the case of Chhabildas Tribhuvandas Shah and Others Vs. Commissioner of Income Tax, West Bengal, has observed as under (page 737):

"We may point out that we are not concerned with the correctness of the conclusion and we are only concerned with the question whether there is any material in support of the finding of the Appellate Tribunal. In cases involving the applicability of the proviso to section 13, the question to be determined by the Income-tax Officer is a question of fact, namely, whether the income, profits and gains can or cannot be properly deduced from the method of accounting regularly adopted by the assessee. There is nothing special about this question of fact, and generally the only question of law that can possibly arise is whether there is any material for the finding. In our opinion the High Court was right in refusing to call for a statement of the case."

13. This court in the case of CIT Vs. Singhal Natural Stone (P) Ltd., has held that the finding about the rejection of income from a particular amount (from Rs. 20,78,821 to Rs. 5,15,259) was based on appreciation of material on record and, accordingly, it was observed that no question of law, much less a substantial question of law, arises so as to entertain the said appeal.

14. This court, again in the case of Commissioner of Income Tax, Jaipur Vs. Amrapali Jewels (P.) Ltd., observed as under:

"In our opinion, therefore, once the Tribunal accepted the factual explanation of the assessee and accordingly, deleted the additions in question made by the Assessing Officer in exercise of its appellate discretionary powers, then it would not involve any substantial issue of law as such. In other words, this court in its appellate jurisdiction under section 260A *ibid*, would not again *de novo* hold yet

another factual inquiry with a view to find out as to whether the explanation offered by the assessee and which found acceptance to the Tribunal is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding recorded had been entirely de hors the subject, or when it had been based on no reasoning, or when it had been based on absurd reasoning to the extent that no prudent man of average judicial capacity could have ever reached to such conclusion, or when it had been found against any provision of law, then a case for formulation of any substantial question of law on such finding can be said to arise. Such is not the case here on facts."

15. This court in the case of Pansari Gems International Vs. Commissioner of Income Tax has held as under:

"The total turnover during the year under reference is Rs. 8.86 crores. The Income-tax Appellate Tribunal has held that gross profit rate does not depend on the basis of specification of item, but it depends upon the quality, shine, etc. The assessee has earned gross profit varied from 6.32 per cent to 26.45 per cent, but from the chart filed by the assessee, it cannot be concluded that gross profit rate declared by the assessee was correct. The Assessing Officer has found that purchases were not fully verifiable. The books of account were rejected for various reasons. Previous year also gross profit rate was 18.87 per cent and this year, it has been accepted at 17 per cent by the Commissioner of Income-tax (Appeals) and the order passed by the Commissioner of Income-tax (Appeals) has been affirmed by the Income-tax Appellate Tribunal. In view of the reasons assigned by the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal in its orders, we find that no substantial question of law arises in the present appeal. The facts of the case and the evidence have been properly appreciated by the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal."

16. That other judgments on the above aspect are in the case of Commissioner of Income Tax Vs. Dr. A.P. Bahal , CIT v. Jaimal Ram Kasturi [2013] 33 Taxmann.com 315 (Raj), Commissioner, Sales Tax, U.P., Lucknow Vs. Girja Shanker Awanish Kumar, , Commissioner of Income Tax Vs. Jas Jack Elegance Exports, , Arya Confectionery Works Vs. Commissioner of Income Tax, and Awadhesh Pratap Singh Abdul Rehman and Brothers Vs. Commissioner of Income Tax, .

17. This court in the case of Commissioner of Income Tax Vs. Inani Marbles (P) Ltd., and also the Delhi High Court in the case of Action Electricals Vs. Dy. Commissioner of Income Tax, have observed that the past history of the assessee would be one of the reliable guidelines to make or not to make any estimation/addition. We have already referred to hereinabove that the Assessing Officer has failed to bring on record any comparable case so as to justify any estimation/addition, the addition has been deleted by the Commissioner of Income-tax (Appeals) as well as upheld by the Income-tax Appellate Tribunal.

18. In view of what we have observed hereinabove, it is essentially a finding based on appreciation of evidence and is pure finding of fact. Thus, there is no question much less a substantial question of law, which can be said to arise out of the order of the Tribunal. Consequently, we find no merit in the instant appeal and the same stands dismissed, in limine.