

(2014) 01 AHC CK 0179
In the Allahabad High Court
Case No : I.T.A. No. 1 of 2014

Commissioner of Income Tax

APPELLANT

Vs

Jogendra Singh and Co.

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144, 260A, 44AB, 44AD

Citation : (2014) 361 ITR 78 : (2014) 222 TAXMAN 113

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : Dhananjay Awasthi, Advocate for the Appellant

Judgement

1. This appeal by the Revenue u/s 260A of the income tax Act 1961 (hereinafter referred to as "the Act") arises from a judgment of the income tax Appellate Tribunal passed on July 26, 2013. The assessment year to which the appeal relates is the assessment year 2008-09. Though several questions of law have been raised in the appeal, learned counsel appearing on behalf of the appellant states that the following two questions would be comprehensive enough to cover the controversy:

A. Whether the income tax Appellate Tribunal erred in law in deleting the additions made u/s 68 on the basis of affidavits only, ignoring the provisions and spirit and aim of the Legislature in formulating section 68 ?

B. Whether the income tax Appellate Tribunal was justified in assessing the income of the assessee by applying seven per cent net profit rate in place of eight percent as provided u/s 44AB, more so when the assessee could not prove at any stage the genuineness of its claim and neither the Commissioner of income tax (Appeals) or the income tax Appellate Tribunal have given any specific reason for doing so?

2. The assessee filed a return of income of Rs. 1.63 crores. The case was selected for scrutiny on the ground that section 44AB of the Act applies and that

the Assessing Officer should examine the case with reference to undisclosed interest income. During the year, the assessee had derived income from contract work and bank interest. An audit report u/s 44AB of the Act was filed. Since the assessee failed to produce its books of account, the Assessing Officer issued a notice to show cause why addition should not be made of unconfirmed creditors and proposed to disallow 50 per cent of the expenses. Accordingly, the Assessing Officer made addition of Rs. 1.25 crores as unconfirmed creditors and disallowed 50 per cent of the expenses in the sum of Rs. 9.16 crores. The Commissioner of income tax (Appeals), in appeal, called for a remand report from the Assessing Officer.

3. The Commissioner of income tax (Appeals) by his order dated February 10, 2012, held that the Assessing Officer was justified in carrying out a best judgment assessment u/s 144 of the Act. At the same time, the Commissioner of income tax (Appeals) held that the best judgment assessment should be based on pragmatic and reasonable considerations and that the Assessing Officer had acted unreasonably by adding the entire sundry creditors' balances and disallowing 50 per cent of the expenses which would result in an unreasonable profit margin of 50 per cent. The Commissioner of income tax (Appeals), inter alia, noted that from the remand report, it emerged that most of the balances of the creditors were verified and confirmed. Moreover, the assessment of the assessee for the assessment year 2005-06 had been completed u/s 143(3) of the Act at a net profit rate of 3.1 per cent and for the year in question, the net profit declared by the assessee was 4.5 per cent. Considering the totality of facts and circumstances, the Commissioner of income tax (Appeals) held that a net profit rate of seven per cent would be fair, having regard to the rate adopted in the case of the assessee itself and the nature of the civil construction business.

4. In appeal the Tribunal has confirmed the order of the Commissioner of income tax (Appeals). The Tribunal considered the presumptive rate of eight per cent, which is prescribed in section 44AD of the Act in the case of civil construction business but at the same time while assessing the reasonableness of the net profit rate which was adopted by the Commissioner of income tax (Appeals), the Tribunal has found that for the assessment year 2005-06 where assessment was completed u/s 143(3) of the Act the Assessing Officer had adopted a net profit rate of 3.1 per cent (the assessee had declared a net profit rate of 2.1 per cent) whereas for the assessment year under appeal the assessee had declared a net profit rate of 4.5 per cent. Moreover, the Tribunal has declined to interfere on the ground that even in the case of a best judgment assessment it is well settled that the Assessing Officer cannot act capriciously and the assessment has to be made on the basis of the previous history, local knowledge and the circumstances pertaining to the assessee.

5. On the second issue, the Tribunal has held that during the stage of the remand proceeding, the assessee had filed by way of affidavits confirmations from the creditors. Subsequently, three remaining creditors had also filed

confirmations. The Tribunal has compared the same with the list of sundry creditors in the balance-sheet for the earlier year ending on 31 March, 2007. It has been found that the creditors have provided building material for civil construction work and road roller and JCB machine for the use of the business activities of the assessee and, therefore, if some outstanding amount was left due at the end of the financial year, which was confirmed by the creditors, this could not be regarded as an unexplained liability.

6. On the balance, having heard learned counsel appearing on behalf of the Revenue, we are not satisfied that any substantial question of law would arise. The Supreme Court has held in *Kachwala Gems, Jaipur Vs. Joint Commissioner of Income Tax, Jaipur*, that in a best judgment assessment, there is always a certain degree of guess work but at the same time the authorities should not act in an arbitrary manner and must make an effort to compute an honest and fair estimate of the income of the assessee.

7. In the present case, on both aspects of the matter, the Tribunal cannot be regarded as having committed any error. As regards the rate of net profit, the course of business of the assessee for the assessment year 2005-06 was also of relevance where a rate of 3.1 per cent had been accepted in a proceeding u/s 143(3) of the Act. For the year in question, where the assessee has declared a rate of 4.5 per cent, the Commissioner of income tax (Appeals) has adopted a rate of 7 per cent. The Commissioner of income tax (Appeals) furnished reasons why he believed that the Assessing Officer had not made a reasonable assessment based on best judgment assessment. These reasons have correctly weighed with the Tribunal. Even on the aspect of the outstanding balances of creditors, the liabilities have been confirmed in the shape of affidavits. Hence, no substantial question of law would arise. The appeal is, accordingly, dismissed. There shall be no order as to costs.