(2008) 11 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Parbhat Kumar RESPONDENT

Date of Decision : 14-11-2008

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

Citation : (2010) 323 ITR 675

Hon'ble Judges : L.N. Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The Revenue has preferred this appeal u/s 260A of Income Tax Act, 1961, against the order of the learned Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh, passed in I. T. A. No. 323/ Chandi/2005, dated May 25, 2007, for the assessment year 2001-02, proposing to raise the following substantial question of law:

(i) Whether, on the facts and in the circumstances of the case, the learned Tribunal was right in law in directing to determine the net profit by applying a net profit rate of 12 per cent. on contract receipts of Rs. 91,65,025, excluding the cost of material supplied by the Department subject to allowability of salary and interest paid to the partners, without appreciating that the assessee is maintaining account books and the Assessing Officer/Commissioner of Income Tax (Appeals) have made separate addition of Rs. 16,48,675 by proving that the claim of labour payable was not genuine and further that there was clear admission on behalf of the assessee during appellate proceedings before the learned Income Tax Appellate Tribunal that the account of wages is unverifiable ?

2. The assessee is a contractor engaged in the work of civil construction and filed its return for the assessment year in question. The Assessing Officer made addition to the returned income mainly on account of claim for wages being found to be not verifiable. On appeal of the assessee, the Commissioner of

Income Tax (Appeals) made further additions. Finally, the issue was considered by the Tribunal. While considering the issue of addition on account of unverifiable wages, the Tribunal considered it appropriate to apply reasonable rate of profit, which was assessed at the rate of 12 per cent. on contract receipts, excluding the material supplied by the Department. The Tribunal also relied upon its judgment in the case of Ess Ess Builders P. Ltd. (in I. T. A. No. 707/Chandi/1997 for the assessment year 1993-94, order dated September 16, 2003).

3. We have heard learned Counsel for the parties and perused the record.

4. The Tribunal has proceeded on the basis that there may be unverifiable wages which may call for addition to income, but not to the extent assessed by the Commissioner of Income Tax (Appeals). Applying net profit rate on the basis of best judgment assessment in a given situation will be a question of fact unless such an assessment is shown to be arbitrary or perverse. In the present case, it cannot be held that any substantial question of law arises. Assessment of 12 per cent. of net profit rate of contract receipt is not shown to be arbitrary or perverse.

5. No substantial question of law arises for consideration.

6. The appeal is dismissed.

