courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 22/09/2026

(2003) 05 RAJ CK 0098

In the Rajasthan High Court

Case No : IT Appeal No. 103 of 2002

Commissioner of Income Tax — APPELLANT

Vs

R.D. Gupta Construction (P) Ltd. — RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (2003) 185 CTR 547 : (2003) 133 TAXMAN 81

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Division Bench

Advocate : R.B. Mathur, for the Appellant; P.K. Kasliwal, for the Respondent

Judgement

1. This appeal is directed against the impugned order of Tribunal dt. 12th Dec., 2000. The appeal was admitted in terms of the following questions :

"Whether in the facts and circumstances of the case, the Tribunal was justified and correct in law in rejecting the miscellaneous application u/s 254(2) of the Act of the Revenue when there was mistake apparent on the face of record and the mistake was brought to its notice by Revenue ?"

"Whether in the facts and circumstances of the case, the order of AO is not erroneous and prejudicial to the interest of Revenue when he has accepted the low net profit rate contrary to the accepted rate of net profit of the trade without assessing any reasons ?"

"Whether the CIT has rightly revised the order of AO u/s 263 and directed to apply 10 per cent net profit rate which is minimum prevalent rate of the trade ?"

2. This appeal pertains to asst. yrs. 1996-97. The assessee is a civil contractor and on contract receipts Rs. 52,44,234. Assessee has declared total income of Rs. 1,29,861 showing a net profit, of 2.52 per cent only. The. AO has not accepted that rate and he applied a net profit @ 5 per cent subject to depreciation.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-tax-...

3. On perusal of the assessment record for the asst. yrs. 1996-97, CIT was of the view that assessment order of the AO is erroneous and prejudicial to the interest of Revenue. He issued the show-cause notice u/s 263 of the IT Act, 1961. After hearing the assessee, he applied the net profit rate at 10 per cent subject to depreciation.

4. In appeal before the Tribunal, the Tribunal has allowed the appeal holding that CIT has not recorded an express finding to the/effect that the order, sought to be revised is erroneous as well as prejudicial to the interest of Revenue.

5. Heard learned counsel for the parties.

6. Mr. Mathur, learned counsel for the appellant submits that there is a finding of the CIT in his order that order of the AO is prejudicial to the interest of Revenue and erroneous, therefore, it is well within the jurisdiction of the CIT to revise the assessment order. Even a miscellaneous application has been moved for rectification of the order of Tribunal dt. 12th Dec., 2000, that was also rejected by the Tribunal vide order dt. 18th May, 2001, holding that there is no apparent mistake.

7. The finding, which has been given by the CIT regarding the assessment order that order is erroneous and prejudicial to the interest of the Revenue reads as under:

"In view of the above discussion, I would hold that a case where too a low net profit has been applied while estimating the income of an assessee, it will amount to an erroneous order prejudicial to the interest of the Revenue and, therefore, the CIT will be within his jurisdiction and power to revise such order to recoup the loss to the Revenue. As already stated above, in the case of civil contractors, net profit rate of 8 to 10 per cent is normally accepted and admitted and, therefore, I would direct the AO to apply a net profit rate of 10 per cent in the case of the assessee-company subject to depreciation."

8. Considering the aforesaid finding of the CIT in an order u/s 263 of the Act of 1961, it cannot be said that CIT has not found the assessment order erroneous and prejudicial to the interest of Revenue. The Tribunal has committed error in allowing the appeal on the ground that no such finding has been given. As the appeal has not been considered on merits, we set aside the order of Tribunal dt. 12th Dec., 2000, and remit the matter back to the Tribunal to decide the appeal of the assessee on merits.

9. The appeal is disposed of with the above directions.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-tax-...