(2008) 08 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Sandeep Bus Service P. Ltd. RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 260A

Citation : (2009) 316 ITR 244

Hon'ble Judges : Rajesh Bindal, J;Hemant Gupta, J

Bench : Division Bench

Judgement

Rajesh Bindal, J.—The Revenue has filed the present appeal u/s 260A of the Income Tax Act, 1961 (for short ""the Act""), against the order

passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short ""the Tribunal""), in I.T.A. No. 15 (ASR)/2007 and I.T.A. No.

63 (ASR)/2007, dated October 5, 2007, for the assessment year 2003-04, raising the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in determining the income at Rs.

8,43,207 by applying net profit rate at 4.96 per cent, comparing it with comparable cases as against income determined by the Assessing Officer

at Rs. 24,04,500 by applying the occupancy rate based on the field enquiries in the case of the assessee.

2. Briefly the facts are that the respondent-assessee-company is engaged in the business of transport. The return for the assessment year in

question was filed on November 28, 2003, declaring a loss of Rs. 5,25,000. Initially the return was processed u/s 143(1) of the Act on December

24, 2003. However, considering that the regular assessment of the assessee was required, keeping in view certain discrepancies found, a notice u/s

143(2) of the Act along with notice u/s 142(1) of the Act was issued to the assessee on November 29, 2004. Finding a number of discrepancies in

the books of account maintained by the assessee, the same were rejected and estimation of the income of the assessee was made considering the

occupancy rate of 67 per cent. The assessee had shown gross receipts of Rs. 1,45,97,757 whereas receipt on the basis of 67 per cent, occupancy

came to be Rs. 1,75,24,687. The difference of Rs. 29,29,500 was added to the income of the assessee and reducing the loss of Rs. 5,25,000

claimed by the assessee, the assessment was framed at a net income of Rs. 24,04,500.

3. Aggrieved against the order of the assessment the assessee preferred an appeal. The Commissioner of Income Tax (Appeals) partially accepting

the appeal of the assessee, vide order dated December 5, 2006, remanded the case back to the Assessing Officer for recalculation of the

additions by applying occupancy rate of 65 per cent, as against 67 per cent.

4. Aggrieved against the order passed by the Commissioner of Income Tax (Appeals) the assessee as well as the Revenue filed appeals before the

Tribunal. The Tribunal, while dismissing the appeal of the Revenue and accepting that of the assessee, directed for estimation of the net profit of the

assessee at the rate of 4.96 per cent, of the gross receipts and in terms thereof net income of the assessee was determined as Rs. 8,43,207 as

against the net loss of Rs. 5,25,000 shown by the assessee.

5. Learned Counsel for the Revenue contended that keeping in view the comparative cases of the transporters showing better occupancy and

income, the estimation made by the Tribunal in the case of the assessee was not fair. However, she does not dispute the fact that the routes on

which the buses of the assessee were plying and that of the other transporters were different. Still this Court finds that the Tribunal in the facts and

circumstances of the case had assessed the income of the assessee by applying net profit rate of 4.96 per cent. on gross receipts. While examining

the material placed on record in appellate jurisdiction u/s 260A of the Act, this Court would not like to substitute its own opinion over and above

the opinion expressed by the Tribunal by making estimation of the income as the same would not fall within the ambit of a substantial question of

law.

6. Accordingly, we do not find any substantial question of law arises in the present appeal and the same is dismissed.

