

(2008) 04 DEL CK 0080
In the Delhi High Court
Case No : ITA No. 1164 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Sobti Construction (India)

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Income Tax Act, 1961 — Section 28, 44AD(1)

Citation : (2008) 307 ITR 374 : (2008) 174 TAXMAN 39

Hon'ble Judges : Manmohan Singh, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Salil Kapoor, for the Respondent

Judgement

Madan B. Lokur, J.—The Revenue is aggrieved by an order dated 30th December, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "G" in ITA No. 144/Del/2003 relevant for the Block Period 1997-98 to 2001-02.

2. After hearing learned Counsel for the parties, we admit this appeal and frame the following substantial question of law for consideration:

Whether the Income Tax Appellate Tribunal was correct in law in applying the provisions of Section 44AD(1) of the Income Tax Act, 1961 even though the gross receipts from the construction business of the assessed were more than Rs. 40 lakhs?

3. The assessed is a contractor and a search was carried out on its premises on 7th June, 2000 when some undisclosed income was found. Upon the matter being looked into by the Assessing Officer, he was of the view that the assessed was required to account for receipts to the extent of Rs. 62,39,536/-. The assessed was able to give an Explanation with regard to a part of the amount and accepting that Explanation, the Assessing Officer added an amount of Rs. 42,45,036/- out of the receipts of Rs. 62,39,536/-.

4. Against the order of the Assessing Officer, the assessed preferred an appeal

before the Commissioner of Income Tax (Appeals) which was partly allowed by the Commissioner of Income Tax (Appeals) and it was held that only an amount of Rs. 39,44,536/- could be added to the income of the assessed.

5. Aggrieved thereby, the assessed preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal found that while the assessed had some income which was not disclosed in its books, it had also incurred some expenses on account of extra work having been done. If this is taken into consideration, the net profit of the assessed would be much less than the amount of Rs. 39,44,536/-.

6. The Tribunal then applied the principle laid down by Section 44AD(1) of the Act and estimated the profit of the assessed at 8% and directed the Assessing Officer to levy tax accordingly.

7. Learned Counsel for the Revenue has pointed out that the provisions of Section 44AD(1) of the Act would not apply if the gross receipts are over Rs. 40 lakhs.

8. Section 44AD(1) of the Act, Along with the proviso, reads as under:

44AD(1). Notwithstanding anything to the contrary contained in Section 28 construction or supply of labour for civil construction, a sum equal to eight per cent of the gross receipts paid or payable to the assessed in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessed in his return of income, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that nothing contained in this sub-section shall apply in case the aforesaid gross receipts paid or payable exceed an amount of forty lakh rupees.

9. In the present case, the gross receipts are admittedly above Rs. 40 lakhs although learned Counsel for the Revenue contended that the undisclosed receipts were only to the extent of Rs. 39 lakhs.

10. We find that Section 44AD(1) of the Act does not deal with undisclosed receipts but deals with gross receipts. Therefore, we cannot accept the contention of learned Counsel for the assessed.

11. Since the provisions of Section 44AD(1) of the Act do not apply, the Tribunal could not have assumed the estimated profit at 8% which it has done as per Section 44AD(1) of the Act. In fact, by estimating the profit at 8%, the Tribunal has indirectly applied the provisions of Section 44AD(1) of the Act, something which could not have been done directly.

12. In these circumstances, we are of the view that the Tribunal was incorrect in directing the Assessing Officer to restrict the addition by estimating the net profits of the assessed at 8% of the unaccounted receipts.

13. We answer the question in the negative, in favor of the Revenue and against the assessed and remand the matter to the Assessing Officer to calculate the estimated profit of the assessed on the unaccounted receipts of Rs. 39,44,536/-.

The appeal is disposed of in the above terms.