(2008) 03 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Supreme Builders — RESPONDENT

Date of Decision : 25-03-2008

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

Citation : (2008) 217 CTR 281 : (2008) 303 ITR 1 : (2008) 174 TAXMAN 228

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The Revenue has filed the present appeal u/s 260A of the IT Act, 1961 (for short ''the Act''), against the order of the Income Tax Appellate Tribunal, Chandigarh, Bench ''A'' Chandigarh (for short Tribunal''), dt. 25th Jan., 2007, passed in ITA No. 261/Chd/2005 for the asst. yr. 2001-02 raising the following proposed substantial question of law:

Is the Hon''ble Tribunal, in the facts and in the circumstances of the case legally correct in allowing interest and salary to partner when there is a clear finding of fact that books of account are maintained on cash basis and that no payments have been made to the partners?

2. The respondent is a firm and a civil contractor. Return for the asst. yr. 2001-02 was filed on 9th March, 2002, declaring an income of Rs. 12,990. In the return, income was worked out by adopting 10 per cent of the gross receipts of Rs. 78,57,707 as income and further reducing interest paid to partners, salary to partners and depreciation, thereby arriving at the net taxable income of Rs. 12,990. During the course of assessment proceedings, revised computation of income was filed by increasing the figure of gross receipts from contract from Rs. 78,57,707 to Rs. 93,65,886. In the revised computation, the quantum of admissible salary to partners was also increased from Rs. 75,722 to Rs. 1,48,309. The assessment was framed u/s 143(3) at an income of Rs. 22,15,480

by rejecting books of accounts, adopting 12 per cent of the gross receipts of Rs. 78,57,707 as income, making an addition of Rs. 15,08,181 on account of receipts not declared in the original computation (Rs. 93,65,886 - 78,57,707) and further allowing depreciation, but not allowing deduction on account of interest and salary to partners holding that the assessee has failed to prove the factum of payment and as cash system of accounting is being followed, the expenses on account of interest and salary are disallowed.

3. The assessee filed an appeal before the CIT(A), Ludhiana. While partly allowing the appeal vide order dt. 23rd Nov., 2004, the CIT(A) upheld the application of flat rate of 12 per cent on the contract receipts in respect of the difference in contract receipts of Rs. 15,08,181. The appellate authority held that instead of assessing the entire amount of difference in receipts as income of the assessee, a profit of 12 per cent be computed. In regard to the payment of salary and interest to the partners, it was held that since the AO had rejected the book results and applied a rate of 12 per cent on gross receipts, deduction on account of salary and interest was permissible to the assessee on the basis of terms and conditions of the partnership deed.

4. Aggrieved against the said order, the Revenue filed the appeal before the Tribunal, Chandigarh, questioning the deduction on account of salary and interest allowed to the partners of the assessee. The Revenue also contested the directions of the CIT(A) to assess only 12 per cent of profit in respect of difference as per revised return receipts. The Tribunal vide impugned order dt. 25th Jan., 2007, dismissed the appeal filed by the Revenue.

We have heard learned Counsel for the Revenue.

5. Shri Sanjeev Bansal, advocate, learned Counsel for the Revenue, has argued that the assessee was maintaining books of accounts on cash basis and, therefore, deduction on account of salary and interest to the partners was not permissible unless the payment was made to the partners during the previous year. It was also contended that the assessee had filed the return of income on the basis of less receipts. Therefore, whatever difference was in the receipts, the same was to be added as income of the assessee.

6. We find no force in the argument raised by the Counsel for the Revenue. In the present case, the profit has been computed by application of flat rate on receipts, as the AO has rejected the results of the assessee by recording a finding of fact that the assessee has not maintained the regular books of accounts. The partnership deed is not disputed by the Revenue and as per this partnership deed, the remuneration of the partners was to be credited in the capital account of the parties in the end of the financial year. Since the assessee is maintaining its books of accounts under the cash system of accounting, deduction on account of salary and interest to be paid to the partners was allowable as per the partnership deed. In this regard, the assessee had also relied upon the Board Circular No. 739, dt. 25th March (1996) 131 CTR 53, which

is not disputed by the Department.

In regard to the assessment of income pertaining to difference in receipts, the profit having been determined by application of flat rate, the difference in payments does not justify the different treatment. It is not a case of an assessee who has maintained regular books of accounts and the result disclosed having been accepted by the Department in which case the difference in receipts would have been the impact of enhancing the income to the extent of such difference. Therefore, in the present case, regular books of accounts not having been maintained and a flat rate applied, the extra payment receipt by the assessee deserved the same treatment as other payments.

7. In view of the above, the question raised by the Revenue is answered in the affirmative, i.e., against the Revenue and in favour of the assessee.

Thus, we find no merit in the present appeal and the same is dismissed.