
(1994) 07 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 83 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Vinod Kumar Bhatia

RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1995) 211 ITR 253 : (1995) 83 TAXMAN 466

Hon'ble Judges : J.L. Gupta, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; A.K. Mittal, for the Respondent

Judgement

1. The brief facts giving rise to this petition u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), are that Vinod Kumar Bhatia, the respondent (hereinafter referred to as "the assessee"), who is a building contractor, filed an Income Tax return for the assessment year 1984-85 showing an income of Rs. 1,20,730. The assessee had not maintained any accounts and the income mentioned in the return was arrived at by applying profit at the rate of ten per cent. of the payment received by him. The assessee had also claimed deduction on account of interest paid to the banks and the Life Insurance Corporation and depreciation of a truck which was purchased and was used in connection with the construction work. The assessment order dated September 10, 1986, annexure P-2, was passed by the Income Tax Officer, Karnal. He accepted the income on the basis of ten per cent. of the total payments received by the assessee as building contractor, but rejected the other part of deduction on account of payment of interest and depreciation of the truck. The assessee filed an appeal, which was dismissed by the Commissioner of Income Tax (Appeals), Karnal, by order, annexure P-3, dated January 13, 1989. The assessee filed a second appeal before the Income Tax Appellate Tribunal. That appeal was partly allowed by order, annexure P-4, dated July 3, 1992. It was noted that admittedly the assessee had paid interest on the amount of loan from the banks

and the Life Insurance Corporation and had used the truck for purposes of the business. It was observed that there could not be any rigid formula that where income was estimated by applying a net profit rate, a deduction on account of borrowings and depreciation of machinery could never be allowed. In the facts and circumstances of the case, therefore, the Appellate Tribunal accepted the return and allowed deduction on account of interest paid to the bank as also the amount of depreciation on the truck. The order of the lower appellate authority as also of the Income Tax Officer were accordingly modified. The Department felt aggrieved against the order of the Appellate Tribunal and accordingly moved an application u/s 256(1) of the Act for referring the following question for the opinion of the High Court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the additions of Rs. 24,158 on account of interest paid and Rs. 76,725 on account of depreciation on truck when the total income has been computed by applying a flat rate of ten per cent. on the total contract payments ?"

2. The application was dismissed by the Appellate Tribunal by order, annexure P-1, dated December 10, 1992. Hence, the present petition under Sub-section (2) of Section 256 of the Act.

3. We have heard learned counsel for both the parties.

4. It may be made clear at the outset that in the present petition, we are not sitting in appeal over the order, annexure P-4, dated July 3, 1992, of the Appellate Tribunal. The present discussion must, therefore, be confined to the precise question whether the aforesaid facts give rise to a question of law, which requires the opinion of the High Court. We are of the view that no such question of law arises.

5. In all fairness, what was stated in the return had to be read as a whole. There were two material parts for the present purposes : one was ten per cent. profit on the payments received by the assessee, and the other was certain deductions claimed by him. The figure of ten per cent. on the basis of the payments received by the assessee is not according to any formula provided by any law. It was a convenient method of working out the profit. Probably that mode is adopted in similar cases. In the facts of the present case, instead of mentioning a lower figure, say, seven or eight per cent., without separately claiming depreciation on permissible accounts, the assessee separately mentioned about the deduction, while keeping ten per cent. on the basis of the amount received by him by way of profit. If the two parts were read together, the income returned by him was less than ten per cent. If that were not so, it would amount to ignoring part of the return. The Appellate Tribunal was, therefore, clearly right that there was no rigid formula for working out the net income for purposes of assessment. It is altogether a different matter that it was open to the assessing authority to accept the income returned or to accept it with alteration. The Appellate Tribunal

having accepted the depreciation claimed by the assessee and having allowed deduction thereof from ten per cent profit worked out on the basis of the amount received by the assessee, no question of law arises for being referred to the High Court. We, therefore, find no merit in this petition and accordingly dismiss it in limine.