(2014) 03 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : I.T. Appeal No. 168 of 2013

Commissioner of Income Tax II	APPELLANT
Vs	
Earth Tech Engineers	RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(3), 260A

Citation : (2014) 224 TAXMAN 358

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Denesh Goyal, Advocate for the Appellant; Vikas Jain, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the revenue u/s 260A of the income tax Act, 1961 (in short, "the Act") against the order dated 21.2.2013, Annexure A. 3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No. 336 (ASR)/2012, for the assessment year 2009-10, claiming following substantial questions of law:--

"1. Whether the Hon''ble ITAT was correct in law in confirming the order of the learned CIT(A) scaling down the net profit to 8% on the gross receipts as against 12% applied by the AO at the time of assessment?

2. Whether the Hon''ble ITAT was correct in law in confirming the order of the learned CIT(A) allowing the depreciation out of the net profit?"

A few facts relevant for the decision of the controversy involved, as narrated in the appeal may be noticed. The assessee is a contractor firm. It is engaged in the business of execution of government contracts. Return declaring income of Rs. 23,94,720/- was filed on 29.9.2009 and the same was processed u/s 143(1) on 28.3.2011. The case of the assessee was selected for scrutiny. During the course of assessment proceedings, while examining the books of account, certain discrepancies were found. The assessee claimed expenditure of Rs.

2,78,88,170/- which was very much on the higher side as the works executed by the assessee were to the tune of Rs. 7,49,84,804/- only. The assessee was asked to produce proof of expenditure incurred on wages and labour, wages register and also to correlate wages paid with the projects executed. The assessment u/s 143(3) of the Act was made and income was determined at Rs. 91,94,154 vide order dated 22.12.2011, Annexure A. 1 by applying 1296 rate on gross receipt after excluding cost of material supplied by the department. Aggrieved by the order, the assessee filed appeal before the Commissioner of income tax (Appeals) [in short, CIT(A)]. Vide order dated 7.6.2012, Annexure A. 2, the CIT(A) partly allowed the appeal and directed the Assessing Officer to apply net profit rate of 896 as against 1296 applied at the time of assessment on the contract receipt and to allow the depreciation and salary paid to partners out of that. Accordingly, the income was reduced by Rs. 36,36,070/-. Aggrieved by the order, the revenue filed appeal before the Tribunal. Vide order dated 21.2.2013, Annexure A. 3, the Tribunal dismissed the appeal of the revenue and cross objections of the assessee and confirmed the order of the CIT(A). Hence the instant appeal by the revenue.

2. On 9.10.2013, the motion bench while issuing notice of motion had recorded as under:--

''The revenue challenges order dated 21.2.2013 passed by the Income Tax Appellate Tribunal, Amritsar and order dated 7.6.2012, passed by the CIT(A) by raising the following substantial questions of law:--

"1. Whether the Hon''ble ITAT was correct in law in confirming the order of the learned CIT(A) scaling down the net profit to 8% on the gross receipts as against 12% applied by the AO at the time of assessment?

2. Whether the Hon''ble ITAT was correct in law in confirming the order of the learned CIT(A) allowing the depreciation out of the net profit?"

We have heard learned counsel for the appellant and find no reason to interfere with the order passed by the CIT(A), affirmed by the Income Tax Appellate Tribunal, scaling down the net profit to 8% against 12% applied by the Assessing Officer. The reasons assigned by the CIT(A) as well as the ITAT, are clear and cogent and even otherwise no two contractors can have a similar rate of profit. The profit of a contractor would necessarily depend upon various factors like place of execution of the contract, the accessibility of labour, raw material etc. and would, therefore, vary from contractor to contractor. The assessee in the present case, was admittedly laying optical fiber cables etc. in a remote border area of Jammu and Kashmir. We therefore, find no reason to entertain the first question raised by the revenue and reject the same.

Notice of motion for 17.12.2013, relating to the second substantial question of law.''

Accordingly, the arguments on question No. 2 were heard.

3. Learned counsel for the revenue relying upon the judgments of this Court in Commissioner of Income Tax Vs. Gian Chand Labour Contractors, and ITA No. 65 of 2002, CIT v. Shri Som Dutt Gargi decided on 12.8.2010 submitted that the CIT(A) as well as the Tribunal were in error in allowing the depreciation from the net profit rate of 8%.

4. On the other hand learned counsel for the assessee supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal.

6. The issue before this Court in Commissioner of Income Tax Vs. Chopra Brothers India (P.) Ltd., and Girdhari Lal Vs. Commissioner of Income Tax and Another, was with regard to deduction to be made on account of depreciation from the gross receipts while applying net profit rate. It was held on the basis of a circular issued by the Board, which was binding on the revenue that the gross receipts to which net profit rate is to be applied shall be determined after giving allowance on account of depreciation.

7. The judgment relied upon by the learned counsel for the revenue in Gian Chand Labour Contractors''s case (supra) was relating to claim of deduction on account of freight charges paid by the assessee to the truck operators union where net profit rate was applied. In Som Dutt Gargi''s case (supra), the assessee claimed deduction of interest paid from income on application of net profit rate. In both the cases, it was held that the same could not be reduced from the net profit rate applied for calculating the income of the assessee. That is not the position in the present case and these judgments are, thus, distinguishable. In view of the above, no substantial question of law arises in this appeal. Accordingly, the same is hereby dismissed.