(2000) 04 RAJ CK 0014

In the Rajasthan High Court

Case No : ITA No. 1138/Jp of 1995 A.Y. 1985-86 24 April 2000

INCOME TAX OFFICER APPELLANT

Vs

CHETANRAM RAM GOPAL RESPONDENT

Date of Decision : 24-04-2000

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

Citation : (2000) 68 TTJ 229

Hon'ble Judges : B.M. Kothari, A.M.

Bench : Division Bench

Advocate : B.D. Guijar, for the Revenue and Suresh Qjha, for the Assessee, for the Appellant;

Judgement

B.M. Kothari, A.M.

The revenue has raised the following ground in this appeal

"On the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in deleting the addition of Rs. 77,000 in respect of unexplained liabilities in labour charges account."

2. The assessee in the cross-objection submitted by them has raised as many as 8 grounds but it mainly supports the order of the Commissioner (Appeals) deleting the addition of Rs. 77,000 made in respect of liability for outstanding labour payments shown in the balance-sheet. The other point raised in cross-objection relates to confirmation of the application of G.P. rate of 15 per cent by the assessing officer on contract payments receipts of the assessee.

3. The learned senior departmental Representative submitted that the balance sheet furnished by the assessee, inter alia, disclosed liability of Rs. 72,000 under the head "labour payment account" in the first period covering the period from 1-1-1984, to 1 5-7-1984. The second period covers the period from 15-7-1984, to 31-12-1984. Similar liability of Rs. 5,000 was shown in the balance sheet pertaining to the second period under the head "labour payment account". The

assessing officer made the addition in respect of the aforesaid liability on the ground that the assessee did not furnish any details and evidence to support the aforesaid outstanding liability in respect of labour payments. The Commissioner (Appeals) deleted the said addition of Rs. 77,000 mainly on the ground that the liability of similar nature was shown in the balance sheet for assessment years 1983-84 and 198485 also to the tune of Rs. 70,000 and 2,84,000, respectively. The assessments for these two years were also completed under s, 143(3) of the Act and no adverse inference was drawn during these two years. The Commissioner (Appeals) further observed that since G.P. rate has been applied in the present case on contract receipts no separate addition in respect of such outstanding liability should have been made, as application of G.P. rate takes care of all inadmissible expenses. The Commissioner (Appeals) accordingly deleted the said addition of Rs. 77,000. A perusal of the written submission submitted by the assessee before the Commissioner (Appeals), inter alia, reveals that the assessee had furnished list of outstanding labour payments along with such written submissions which shows that such liability consisted of amount payable to 25 truck owners to whom payments could not be made in the relevant accounting period. At one point of time during the course of hearing it was thought proper to send back the matter as such list of 25 truck owners representing outstanding liability for labour payments were submitted before the Commissioner (Appeals) for the first time and these details were not submitted b ore the assessing officer. The assessment before the assessing officer was made u/s 144.

However, after a careful consideration of the entire relevant facts and keeping in view the fact that the matter relates to a very old period, namely assessment year 1985-86 it is not considered proper on the facts of the present case to once again set aside this matter and restore it back to the assessing officer. Such a course of action is being taken particularly in view of the fact that outstanding liability in the first accounting period was Rs. 72,000 but it reduced to only Rs. 5,000 as at the end of the second period of the relevant accounting year. Thus at the end of the accounting year consisting of two separate periods there was an outstanding liability of only Rs. 6,000. Moreover, the Commissioner (Appeals) in the order passed by him has also observed that such liabilities were shown in the balance sheet pertaining to assessment years 1983-84 and 1984-85 and no additions were made in respect of such outstanding liability. The profit in the contract business of the assessee has been estimated by the assessing officer at 15 per cent which has been upheld by the Commissioner (Appeals) in the present appeal. After rejecting the books of accounts and making the assessment u/s 144, separate addition made in respect of such liabilities may not be justified, as the income of the assessee has been assessed on an estimated basis by the assessing officer after ignoring the book results. Separate addition in respect of cash credits or unexplained credits can be made in certain cases even after applying the proviso to section 145(l) or section 145(2). But it will depend upon the facts and circumstances of each case. However, in cases of contractors generally income is estimated by applying profit rate on contract receipts as has been done by the assessing officer in the present case also. 1, therefore, find no justification to interfere with the view taken by the learned Commissioner (Appeals) so far as it relates to the deletion of addition of Rs. 77,000 in respect of the aforesaid outstanding liabilities in the labour charges account. In my view the revenue ''s appeal has no merit.

4. Similarly, I do not find any merit in the cross-objection submitted by the assessee. Six grounds out of 8 grounds raised in cross-objection are merely to support the order of the Commissioner (Appeals) deleting the aforesaid addition of Rs. 77,000. Since the revenue ''s appeal has been dismissed, the grounds so raised by the assessee in their cross-objection in relation to the aforesaid point have become infructuous.

5. As regards the ground relating to application of profit rate of 15 per cent on contract payment is concerned, the learned Commissioner (Appeals) has referred to an earlier order dated 13-4-1989, passed by the Commissioner (Appeals) wherein he has given a specific finding as under :

"Undoubtedly, I agree that the G.P. rate applied by the Income Tax Officer is correct. However, he has not substantiated it by the facts which are available on the records. In these circumstances, I think it will be better that the case is set aside ....

The Commissioner (Appeals) in the impugned order observed that since his learned predecessor, after going through the facts of the case, has held that the rate of G.P. applied by the Income Tax Officer is correct and, therefore, he confirmed the application of profit rate of 16 per cent. After a careful consideration of the entire relevant facts I am of the view that the Commissioner (Appeals) has rightly confirmed the said addition. It may be relevant here to mention that the learned counsel for the assessee at the time of hearing told that no further appeal was preferred by the assessee against the earlier order, dated 13-4-1989, of the Commissioner (Appeals) for assessment year 1985-86. However, after hearing, the learned counsel has submitted a copy of Form No. 36 showing that an appeal against the first order of the Commissioner (Appeals), dated 13-4-1989, was submitted before the Tribunal. The learned counsel has mentioned a hand-written note on the copy of the Form No. 36 "Order is not available today". Since I have examined the case on merits and agreed with the findings of the assessing officer and the Commissioner (Appeals) that application of profit rate of 15 per cent is reasonable on the facts of the present case, there is no justification for any interference in the order of the Commissioner (Appeals) in relation to this ground raised in cross objection.

6. In the result, the revenue ''s appeal as well as the cross-objection submitted by the assessee are dismissed.