
(2009) 09 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 636 of 2009 (O and M)

Kesar Singh

APPELLANT

Vs

CIT

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Income Tax Act, 1961 — Section 144, 260A, 44AD

Citation : (2009) 09 P&H CK 0022

Hon'ble Judges : Daya Chaudhary, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—The assessee has preferred this appeal u/s 260A of the income tax Act, 1961 (in short, "the Act"), against the judgment of the income tax Appellate Tribunal, Amritsar Bench, Amritsar dated May 29, 2009 in I. T. A. No. 216(ASR)/2009 and C. O. No. 17 (ASR)/ 2009 (assessment year 2006-07), proposing to raise the following substantial questions of law :

(i) Whether in the facts and circumstances of the case the learned Tribunal was justified and right in setting aside the order of the Commissioner of income tax (Appeals) for de novo consideration and that too without reverting to the findings given by the Commissioner of income tax (Appeals) that the provisions of section 44AD are not applicable, not only because the gross receipts are more than Rs. 40 lakhs, but also because the guidance from the provisions of section 44AD cannot be taken as he is a handling and transport contractor of food grains procurement agencies and does not have his own trucks for transportation of foodgrains bags. The trucks are being arranged from the Truck Union, Mansa. The labour has been arranged from the Punjab Pardesh Palledar Mazdoor Union, Mansa as the appellant cannot arrange the labour from open. The Assessing Officer has also not given even a single comparative case of the area having similar business. The Assessing Officer has also not taken pains to see the past history of the case. The appellant has shown the net profit rate of 2.844 per cent, for the assessment year 2004-05 and 1.700 per cent, for the assessment

year 2005-06 after appeal effect when the gross receipts were Rs. 2,03,60,066. The rate disclosed by the appellant for the assessment year under appeal is around 3 per cent, of the gross receipts. However, keeping in view the deficiencies, as pointed out by the Assessing Officer in his order and considering his observations regarding unverifiable expenses in the absence of production of books of account, I deem it fit to restrict the addition to 4 per cent, of the gross receipts of Rs. 3,01,36,669 which works out to Rs. 1,20,54,671 as against the addition made of Rs. 24,10,933 by the Assessing Officer. The appellant, thus, gets a relief of Rs. 12,05,466 on this ground ?

(ii) Whether in the facts and circumstances of the case the learned Tribunal was justified and right in relying upon the ratio of the judgment in *Shri Ram Jhanwar Lal v. ITO* (2010) 321 ITR 400 (Raj) in income tax Appeal No. 10 of 2006 ?

(iii) Whether in the facts and circumstances of the case and in law the ex parte assessment made u/s 144 of the income tax Act, 1961 should have been quashed in view of the categorical finding that notice of hearing for 11-9-2008 was not served on or before 11-9-2008 ?

(iv) Whether in the facts and circumstances of the case and in law the rate of 3 per cent, should have been applied keeping in view the past history of the case and comparing of the case with truck union in the area ?

(v) Whether in the facts and circumstances of the case the impugned order of the learned Tribunal remanding the case to the Assessing Officer is sustainable and more so in view of the judgment passed by this honble High Court reported in *Ranbaxy Holding Company Vs. Commissioner of Income Tax*,

2. The assessee is a labour contractor. He filed his return declaring his income equal to 3 per cent, of the net profit. Gross receipts were declared to be Rs. 3,01,36,669, while the net profit was shown to be Rs. 9,03,274. The Assessing Officer rejected the figure of net profit worked out by the assessee on the ground that the expenses debited to the profit and loss account were not verifiable. It was held that in such a situation, the net profit rate should be worked out in accordance with the provisions of section 44AD, of the Act, i.e., 8 per cent, in the case of a civil contractor where account books, are not maintained. It was observed that though the section applied where the receipts were up to Rs. 40 lakhs, the same rate could be applied even to contracts where the receipts were beyond the said limit, where no accounts and documents were produced and application of such a rate was otherwise proper. Accordingly, the Assessing Officer made the assessment.

3. On appeal, the Commissioner of income tax (Appeals) restricted the addition to 4 per cent, of the gross profit. It was observed that the assessee did not get sufficient opportunity and since section 44AD was not applicable, the Assessing Officer was, not justified in applying the. statutory rate mentioned in the said provision.

4. On further appeal, the Tribunal directed the Assessing Officer to complete the assessment as per the books of account.

5. Learned counsel for the appellant submits that the operative part of the order of the Tribunal directing the Assessing Officer to complete the assessment as per the books of account is not based on any application of mind or analysis of the rival contentions. Without discussing the rival contentions, the Tribunal reached the conclusion as under :

The answer given by the honble High Court to question No. 3 is very much relevant. Accordingly, we direct the Assessing Officer to complete the assessment as per the books of account. We direct the assessee to produce relevant books of account as directed by the Assessing Officer. The assessee shall co-operate with the Assessing Officer. In case of failure, the Assessing Officer is at liberty to act in accordance with the law.

6. Learned counsel for the assessee points out that in the judgment referred to in the impugned order, it was held that section 44AD did not apply. Admittedly, books of account are not maintained. The Commissioner of income tax (Appeals) also proceeded on that assumption. There is no discussion or finding that the order of the Commissioner of income tax (Appeals) was erroneous. There was also no conclusion as to why the matter should have been remanded to the Assessing Officer. The Tribunal has, thus avoided its responsibility to act as an appellate court to take decision on correctness or otherwise of the view of the Commissioner of income tax (Appeals) and record its finding.

7. Learned counsel for the Revenue is unable to rebut the submission that there is no discussion or finding in the order of the Tribunal that the order of the Commissioner of income tax (Appeals) was erroneous and reasons for such a finding.

8. In view of the above, we have no option but to set aside the order of the Tribunal and remand the case to the Tribunal for fresh decision on the merits in accordance with law.

9. The appeal is disposed of accordingly.