(2010) 09 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Income Tax R. No. 166 of 1999

Pooja Construction Co. APPELLANT

Vs

The Commissioner of Income Tax RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:
Income Tax Act, 1961 — Section 145(1), 256(1)

Citation : (2010) 09 P&H CK 0159

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") has referred for opinion of this Court following question of law u/s 256(1) of the Income Tax Act, 1961 (in short "the Act") arising out of its order dated 31.8.1998 in ITA No. 750 (ASR)/1992 in respect of assessment year 1990-91:

Whether the Income Tax Appellate Tribunal was justified in giving the finding that proper estimation of income in a contract case is adoption of net profit rate as applied in other comparable cases and the net profit excludes a separate allowance of any other expenditure claimed under profit and loan account and trading account?

2. The assessee is a MES Contractor. During the course of assessment, the Assessing Officer noticed defects in the maintenance of accounts and since the true taxable income was not disclosed in the accounts, invoking proviso to Section 145(1) of the Act, the Assessing Officer made assessment after applying net profit rate of 10%. The said rate was applied after recording a finding that interest of Rs. 1,02,567/- and depreciation of Rs. 4,79,677/- claimed by the assessee had already been considered in the expenses which were to the extent of 90% of the total receipts. On appeal, this view was reversed in light of circular of CBDT dated 31.8.1965. It was held that the assessee was entitled to claim depreciation and interest. On further appeal by the revenue, the view of the

Assessing Officer was restored. Regarding depreciation, the Tribunal observed:

The application of net rate is directly dependent on the net rate shown by other cases in the line of the business. Other cases of contractors are being applied net rate of profit without giving them advantage of depreciation as discussed already with many contractors debit various items which relate to profit & loss or trading account expenditure and claimed 100% of depreciation. This method creates an abnormal situations in the net profit. The A.O. has, therefore, taken a proper course by ignoring depreciation and the interest and applied net rate of 10%. The second positive feature in the assessment of the I.T.O. relates to the observation that the net profit rate of the person who use heavy machinery is going to be more than the net profit of a person who is not using the mechanical aid for execution of Civil Works.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the assessee relying upon the judgment of this Court in Shri Girdhari Lal v. Commissioner of Income Tax, Jalandhar and Anr. ITA No. 51 of 2000, decided on 10.9.2001, submits that depreciation has to be deducted out of net profit in view of circular of CBDI dated 31.8.1965 relied upon by the CIT and also referred to in the judgment of this Court.

5. Learned Counsel for the revenue, on the other hand, submits that after due consideration of the said circular, the Tribunal held on facts that the depreciation having been already taken into account while determining the income at net profit rate of 10%, the same could not be taken into account once again.

6. We find merit in the contention raised on behalf of the revenue. As already observed, the depreciation has to be taken into account out of the net profit rate but if the same has already taken place while applying the net profit rate for determining the income, there cannot be further allowance for depreciation. Judgment in Shri Girdhari Lal is distinguishable.

7. In view of above, question referred is answered against the assessee.

