NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE NO. 103 OF 2010

The Assistant Commissioner of Income Tax, Circle-1(2), Raipur
… Appellant

Versus

M/s Rana Projects International Ltd., Raipur
... Respondent

For Appellant	:	Ms. Naushina Afreen Ali, Advocate.
For Respondent	:	Mr. Neelabh Dubey, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

08/09/2015

1. The present appeal has been preferred by the department aggrieved by order dated 14.9.2009 passed by the Income Tax Appellate Tribunal, Bilaspur, Bench Camp at Raipur, in ITA No. 55/Nag/2009, pertaining to the assessment year 2004-05.

2. The question of law framed on 13.8.2010 was as follows:-

> "Whether on the facts and circumstances of the case, the ITAT was justified in confirming the order of the CIT (A) which was passed on evidence recorded in violation of Rule 46A of the Income Tax Rules, 1962?"

3. Learned Counsel for the department submitted that the Respondent despite repeated notices did not appear before the Assessing Officer. The latter was thus left with no option but to make best judgment assessment on basis of materials available before him. The order is reasoned and is based on materials furnished by the Respondent including the figures from the previous years. Referring to Rule 46A of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules") it was submitted that the CIT (Appeals) ought not to have permitted the Respondent to produce any evidence which could have been, but was not produced before the Assessing Officer especially when there was nothing placed by the Respondent to demonstrate that his case came under any of the Exceptions under Rule 46A.(1) (a) (b) (c) of the Rules.

4. Reliance was placed on [1994] 77 Taxman 497 (Cal.) [Commissioner of Income-Tax *v.* Popular Electric Co. (P.) Ltd.] and [1987] 34 Taxman 425 (AP) [H.S. Imam *v.* Commissioner of Income-Tax].

5. Learned Counsel for the Respondent submitted that it had submitted audited accounts under Section 44AB of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) along with its income tax return. Even if the Respondent did not appear despite notices as alleged, the Assessing Officer had a statutory duty to make a best judgment assessment under Section 144 of the Act based on the details mentioned in the return coupled with the audit report. The audit report has not been discussed by the Assessing Officer at all. The CIT (Appeals) called for a remand statement from the Assessing Officer under Section 250(4) of the Act. It was only after several reminders including one routed through the Additional Commissioner that an “evasive reply” was furnished that the order of the Assessing Officer was correct. Learned Counsel submits that the CIT (Appeals) and the Tribunal committed no error in law by holding that without any finding with regard to any errors or unacceptability of the audited accounts submitted with the return, the Assessing Officer could not have in his capacity for a best judgment assessment applied the rule of the thumb to arrive at a particular figure to be disallowed. No fresh evidence was furnished by the Respondent before the CIT (Appeals) and therefore the question of invoking Rule 46A of the Rules simply does not arise. The finding of the CIT (Appeals) affirmed by the Tribunal is based on the audited accounts itself not discussed by the Assessing Officer at all. Referring to Section 250(5) of the Act read with Rule 46A(4) of the Rules, without prejudice to the above, it was submitted that even the Appellate Authority had the power to direct production of any document or examination of any witness to enable him to decide the appeal including to go into any ground of appeal not specified if the CIT (Appeals) was satisfied with regard to its tenability otherwise.

6. We have considered the submissions and are satisfied to hold that it is apparent from the order of the CIT (Appeals) as affirmed by the Tribunal that no additional evidence was sought to be furnished by the Respondent before them. On the contrary, the CIT (Appeals) referred and relied upon the audited accounts filed by the Respondent before the Assessing Officer but which was not discussed by him. The remand report was sought from the Assessing Officer under Section 250(4) of the Act in the aforesaid background. We find no infirmity in the finding of the Tribunal that the Assessing Officer showed a rather callous attitude in discharge of his statutory duties.

7. Popular Electric Co. (P.) Ltd. (supra), has no application to the facts of the case because it did not relate to an assessee whose accounts were required to be compulsorily audited under the Act. Likewise, H.S. Imam (supra), also has no applicability since it related to the alternative remedy of the assessee under Section 146 of the Act even if it did not appear in response to a notice under Section 144 of the Act, Section 146 having been deleted in the year 1989 much prior to the assessment year in question.

8. We therefore find no merit in the appeal and answered the question of law in the negative and against the Revenue.

9. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/sharad/*