HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

INCOME TAX TRIBUNAL APPEAL No.392 OF 2015

JUDGMENT: (*Per* Hon'ble Sri Justice Ramesh Ranganathan)

This Appeal, under Section 260-A of the Income Tax Act, 1961 (for short 'the Act'), is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench (for short, 'the Tribunal') in I.T.A. No.1314/Hyd/2013 dated 16.05.2014.

The Appeal before the Tribunal was preferred, by the Revenue, against the order passed by the Commissioner of Income Tax (Appeals), setting-aside the order passed by the Assessing Authority for the assessment years 2007-08 to 2009-10 on the ground that the assessee had failed to produce the bills and vouchers maintained by them in support of the books of accounts, and that their profits must be estimated at 12.5% of the gross receipts.

Aggrieved thereby, the assessee carried the matter in Appeal. The Commissioner of Income Tax (Appeals) faulted the Assessing Officer in rejecting the books of accounts, and observed that there was no justification for rejection of the books of accounts of the assessee. The Assessing Officer was directed to accept the admitted books of accounts of the assessee.

Aggrieved thereby, the Revenue carried the matter in Appeal to the Tribunal. In the order under Appeal before us, the Tribunal observed that, when books of accounts were not verifiable, the Assessing Officer had no option but to reject the books of accounts; and the finding of the Commissioner of Income Tax (Appeals) had no merit, as the assessee had failed to produce the requisite bills and vouchers in support of his claim. The Tribunal noted the contention, urged on behalf of the assessee, that they were in a position to produce all the bills and vouchers, if the assessee was given one more opportunity as the same were not available at the time of assessment proceedings for the reason that they were maintained at different places at Hyderabad and Tirupati *etc;* and, considering this plea of the assessee, the Commissioner of Income Tax (Appeals) had remitted the matter to the Assessing Officer with a direction to give one more opportunity to the assessee to produce the bills and vouchers for all the three years under consideration. The Tribunal held that, if the assessee produced all the requisite bills and vouchers in support of his claim, then the Assessing Authority should determine the assessment in accordance with law, and on the basis of the books of accounts; if, on the other hand, the assessee failed to utilize the opportunity, and used any delaying tactics, the Assessing Officer was at liberty to estimate the income of the assessee followed the decision of the Tribunal in ***C. Eswar Reddy*** (Order of the Tribunal in I.T.A. No.668 of 2009 and batch, dated 31.01.2011).

All that the Tribunal has done, in the order under Appeal before us, is to remit the matter to the Assessing Authority to verify the books of accounts and documents, if any, placed by the assessee. While doing so, the Tribunal made it clear that, in case the assessee failed to do so, then it was open to the Assessing Officer to estimate the income of the assessee based on its earlier order in ***C. Eswar Reddy***. The Appeals preferred against the order passed by the Tribunal, in the case of ***C. Eswar Reddy*** *i.e.,* in I.T.T.A Nos.455 of 2015 and batch, were dismissed by this Court on 22.11.2015.

We are satisfied that no question of law, much less a substantial question of law, arises for consideration in this Appeal filed by the Revenue against the order of remand passed by the Income-Tax Appellate Tribunal.

The Appeal fails and is, accordingly, dismissed.

In consequence, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 22-12-2015.
Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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INCOME TAX TRIBUNAL APPEAL No.392 OF 2015

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)

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Date. 22-12-2015

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