

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
ITTA No.51 of 2002

—
JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

This appeal is directed against the order in ITA No.404/Hyd/2001, dated 23.11.2001, passed by the Income Tax Appellate Tribunal, Hyderabad Bench-A, partly allowing the appeal of the assessee.

The only question of law raised, framed and to be decided is whether the Tribunal was justified in sustaining the following additions consequent to:

- i) The rejection of books of accounts by the assessing officer;
- ii) The remand made by the Tribunal directing the assessing officer to decide afresh the quantum of interest that is allowable as a deduction in net profit;
- iii) The holding of insurance receipt of Rs.37,025/- as not capital in nature; and
- iv) The levy of interest under Section 234B and 234C of the Income Tax Act, 1961 (for short, the Act), in the facts of the case.

So far as the issue relating to the rejection of books of accounts and estimation of income is concerned, the Tribunal upheld the rejection of books of accounts by the assessing officer based on its earlier orders in the assessee's own case in I.T.A.Nos.1170/Hyd/1997 and 567/Hyd/1998, dated 10.08.1999. The order of the assessing officer was upheld by the Commissioner (Appeals), based on the earlier order of the Tribunal, and consequently, the Tribunal upheld the action of the Commissioner (Appeals). In view of the earlier order passed by the Tribunal in respect of the books of accounts in the assessee's own case

which has become final, we do not see any error in the finding recorded by the Tribunal.

Regarding the second issue for the claim for deduction of material supplied by the department from gross contract receipts prior to estimation of income, the contention of the assessee was accepted in view of the decision of the Supreme Court in **Brij Bhushan Lal Parduman Kumar v. CIT**^[1]. Similarly, from the gross contract receipts, the quantum of work given on sub-contract should be subtracted as the management contract receipt or sub-contract commission is assessed separately. The Tribunal held that the mode of calculation adopted by the assessing officer and the Commissioner (Appeals) resulted in double taxation, and held that the estimation of profit at 12% should be applied on the gross receipts minus material recoveries by the department and turnover got executed through sub-contractors. It further held that from out of this net profit, depreciation should be allowed separately. Accordingly, the Tribunal directed the assessing officer to allow the same and the quantum of interest that is allowable as genuine should be decided afresh by the assessing officer. This part of remand is challenged by the assessee now, and we are not in a position to understand how the assessee can challenge the order of remand when the substantial issue was decided in favour of the assessee. The remand is only to the extent of calculating the quantum of interest that is allowable as genuine. In that view of the matter, we hold that the assessee cannot be said to be aggrieved by the order of remand only for limited purpose of calculation of quantum of interest by the assessing officer.

Insofar as the third issue relating to the insurance receipt of Rs.37,025/- is concerned, the Tribunal recorded that no evidence was put forward that the receipt is of capital nature and, accordingly, upheld the addition on this account made by the assessing officer. The Tribunal came to that conclusion in the absence of any evidence put forward by

the assessee to show that the receipt is of capital nature. This issue is a pure question of fact and no question of law is involved.

With regard to the last issue of levy of interest under Section 234B and 234C of the Act, the Tribunal held that the levy is mandatory and as it was a consequential levy, the same should be modified in accordance with the order. As rightly pointed out by the Tribunal, the levy of interest under Section 234B and 234C of the Act is in accordance with the provisions of the Act and mandatory and necessary modification has to be done pursuant to the order passed by the Tribunal. Learned Counsel for the appellant could not point out how the levy of interest under Section 234B and 234C of the Act is bad in law.

In view of the above findings, we hold that the question of law as framed for our consideration in this appeal, is not the substantial question of law arising for our consideration, and accordingly dismiss the appeal. The miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

03.03.2015

vs

[\[1\]](#) (1978) 115 ITR 524 (SC)