THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No. 35 of 2015

ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

At the instance of Revenue, though, in the Memorandum of Grounds of Appeal, as many as eight questions of law said to be arising from the order of the Tribunal in IT(SS)A.No.41/Hyd/2005 for the assessment year 1996-97 to 2001-02 and from 01.04.2001 to 13.02.2002, ultimately, the learned Standing Counsel fairly submits that he is pressing only Question No.7.

Question No.7 reads as under:

> **"The Hon'ble Tribunal having noted the fact that the Assessee is himself has accepted before the Appellate Commissioner, the rate of estimation on unaccounted turn over at the rate of 54.62% for broken terminal period forming part of block period, erroneously directed the Assessing Officer to estimate the said unaccounted turnover at the rate of 35% of accounted turn over for the assessment years i.e. 1996-1997 to 2001-2002. Hence the impugned order being contrary to the material facts on record, is also inconsistent with the facts of the case and hence the same is liable to be set aside as erroneous and perverse in law."**

2. It is a case where search operations were conducted resulting in passing of assessment order for Block period 1996-97 to 2001-02 and from 01.04.2001 to 13.02.2002. As against the order determining the tax amount, the Revenue as well as the Assessee filed appeals before the Tribunal. As common issues were involved, both the appeals were disposed of by the Tribunal by a common order.

3. Based on the material available on record, the determination of

undisclosed income of the Assessee was made on estimate basis by complying with the principles set out by the jurisdictional High Court Judgment in **Rajnik & Company**[1] and the decision of the Tribunal in **Dr.S.Surendranath Reddy v. ACIT**[2]. The Tribunal recorded as under:

> **"8. In the light of the above discussion, in view of the various infirmities and inconsistencies noted above in the approach adopted by the lower authorities while determining the undisclosed income of the assessee by extrapolation of the material found during the course of search for earlier years forming part of the block assessment, we have to determine the undisclosed income of the assessee on a reasonable basis, in consonance with the principles laid down by the jurisdictional High Court in the case of Rajnik & Company (supra) and the decision of this Tribunal in the case of Dr.Surendranath Reddy (supra) noted above even by the lower authorities in the impugned orders. At the outset, considering totality of facts and circumstances of the matter, we are of the considered opinion that estimation of unaccounted turnover at 35% of the accounted turnover for all the assessment years from 1996-97to 2001-02, on a uniform basis would meet the ends of justice, as against 54.62% adopted by the assessing officer and on different bases for different years, viz. at 20% for assessment years, as noted above, adopted by the CIT(A). As for the terminal broken period, since the assessee has already accepted before the CIT(A) the adoption of rate of 54.62% by the assessing officer, we find no justification to interfere with the order of the CIT(A) on that aspect. Even though in the course of appellate proceedings before this Tribunal, and through the grounds raised, assessee disputed having accepted before the CIT(A), adoption of rate of 54.62%, we do not find merit in those contentions, as they go against the written submissions made by the assessee before the CIT(A), copy of which is also filed before us in the paper-book.**
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> **9. As for estimation of undisclosed income in relation to such undisclosed turnover determined at 35% of the accounted turnover, viz., we are of the considered view that the lower authorities were not justified in determining the undisclosed income by adopting gross profit rate of the relevant years / period. It is settled position of law as laid down among others by the Delhi High Court in the case of**

CIT V/s Satish Kumar Chandna, New Delhi, vide judgment dated 21.9.2007 in ITA No.142 of 2004, besides the decisions of various Benches of the Tribunal including the Hyderabad Benches in similar matters, it is only the net profit and not the gross profit rate that is relevant to determine the undisclosed income, since even in respect of gross profit in relation to suppressed turnover, certain amounts of indirect costs have to be incurred by the assessee, and it is after exclusion of the same from the gross profit, that one can arrive at the net profit and more importantly undisclosed income in relation to such unaccounted turnover. This more, when the unaccounted turnover forms a significant portion of the tital turnover and is estimated as a percentage of the accounted turnover as high as 35% as in the present case. The basis for the determination of the undisclosed turnover in the present case is the seized material which relates to December, 2001 and January, 2002 faming part of assessment year 2002-03. That being so, we are of the considered opinion, considering various factors which prevailed in different years, as discussed in the earlier years, actual gross loss determined in one year, limitation of installed capacity etc., in our considered opinion, adoption of the net profit rate of the assessment year 2002-03, viz., 3.91% uniformity for all the years forming part of the block period, for determining the undisclosed income relatable to the unaccounted turnover would meet the ends of justice.

10. We accordingly modify the impugned order of the CIT(A) and direct the assessing officer to estimate the unaccounted turnover at 35% of the accounted turnover for the assessment years 1996-97 to 2001-02 and at 54.62% for the broken terminal period forming part of the block period falling under assessment year 2002-03 and then estimate undisclosed income in relation to such unaccounted turnover adopting net profit rate of 3.91% for all the assessment years and terminal broken period falling in the block period. We may caution before parting with that order, the determination of undisclosed income for the entire block period ultimately shall not be on a figure below the undisclosed income by the assessee, while at the same time, disclosure of higher undisclosed income by the assessee for any individual year(s) have to be ignored."

4. The extracted portion of the order of the Tribunal reveals that the Tribunal had taken into consideration various factors, which are being challenged before us as erroneous or perverse. In case of estimation, there is an element of guess work involved and as long as

the same is made following the settled principles, the determination of undisclosed income of the assessee on a reasonable basis is purely a question of fact. In the present case, in the absence of any material to take a contra view, the question of fact as determined by the Tribunal is required to be accepted. Hence, we see no reason to interfere with the orders of the Tribunal with regard to the determination of undisclosed income.

5. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

16th June, 2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

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[1] 251 ITR 561

[2] 72 ITD 205