IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.242 of 2014
Date of decision:10.03.2015

Commissioner of Income Tax, Panchkula
....Appellant

Versus

M/s Rajendra Construction, Panchkula
......Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Yogesh Putney, Advocate, for the appellant.

Ms.Radhika Suri, Sr.Advocate
with Ms.Rajni Paul, Advocate, for the respondent.

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S.J.Vazifdar, Acting Chief Justice (Oral):

This is an appeal against the order of the Income Tax Appellate Tribunal (for short, the 'ITAT') dated 23.08.2013, allowing the appeal of the respondent/assessee, against the order of the Commissioner of Income Tax (for short, the 'CIT'), under Section 263 of the Income Tax Act, 1961 (for short, the 'Act').

The appeal pertains to the assessment year 2008-09. The assessment order is dated 16.08.2010, passed under Section 143(3) of the Act. The CIT proceeded under Section 263 of the Act, on the ground that according to him, the Assessing Officer did not examine the following issues:

> “a) fall in G.P. rate;
> b) purpose of utilizsation of secured loan;
> c) non verification of issue of collateral securities in absence of any documentary evidence;
> d) non verification of unsecured loan;
> e) non confirmation from the Sundry creditors;

f) non maintenance of stock register;
g) non-examination of issue of dis-allowance under Section 40A(3);
h) non-examination of business expenses; and
i) the issue of penalty qua fresh assessment."

Accordingly, the CIT held that the assessment order was erroneous and prejudicial to the interest of the Revenue in as much as the unproved, unsecured loans, sundry creditors, expenses have been accepted and the income had been under-assessed to that extent. The assessment order was, therefore, cancelled under Section 263(1) of the Act and the Assessing Officer was directed to reconfirm the assessment afresh, keeping in view the observations of the CIT.

The ITAT has considered each of the items in sufficient detail. At the outset, we must mention that no question of law arises in this matter. The ITAT has considered the issues, essentially on facts, in coming to the conclusion that the order of the CIT is not sustainable. It is sufficient to refer to some of the aspects regarding the impugned order passed by the ITAT. The ITAT noted that the fall in gross profit was examined by the Assessing Officer. The respondent/assesses' reply was considered. The volume of work had fallen during the year. As a result thereof, the profit had also decreased. Further, the profit had decreased only by less than a quarter percent. Even thereafter, the ITAT had come to the conclusion that the insignificant fall in the gross profit cannot lead to the conclusion that the assessment order was erroneous.

As far as the loan and security in respect thereof was concerned, the ITAT noted that the certificate from the Bank was on record. The Bank statement was also produced by the respondent before the Assessing Officer and before the CIT. Based on the material produced, the ITAT noted that merely because there may be excess cash at a particular point of time, it does not follow that the respondent cannot raise a bank loan.

In view of the nature of the respondent's business, namely, the construction business, the ITAT came to the conclusion, based essentially on facts that it was possible that the stock register was not maintained. Similarly, as regards the sundry creditors made possible in the current financial year, it was noticed that there was opening credit in the balance of the assessee and the copy of the accounts of the assessee was there in the books of M/s Garg Sales and thus, no adverse inference could be taken on the said account.

No question of law arises. The impugned order is based essentially on facts and the appreciation of the facts.

The appeal is, therefore, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

10.03.2015
sailesh

(G.S.Sandhawalia)
Judge