

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.225 of 2008

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Ajay Kumar Singh, Son of Late Ram Suyosh Singh, 303, Jag Kailash Place, New Patliputra Colony, Patna

.... Appellant

Versus

1. Commissioner of Income Tax-II, Patna
2. Joint Commissioner of Income Tax, Range -4, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. K M Mishra, Advocate
For the Respondents : Mr. Rishi Raj Sinha, Sc. SC
Mrs. Archana Prasad, Jr. SC

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and

HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 15-03-2016

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (in short, 'the Act') against an order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') on 12th December, 2007 arising out of ITA No. 255/Pat/2007, relating to the assessment year 2003-04, whereby the Tribunal applied net profit rate @ 8% and also confirmed addition of Rs.6,41,483/- as unexplained cash credit under Section 68 of the Act.

2. This Court has framed the following questions of law for consideration as arising from the order of the Tribunal:-

- (1) Whether the Appellate Tribunal ought to have separately allowed deduction of account of depreciation (sic) of Rs.25,72,528/- since the same had been claimed by the appellant?
- (2) Whether the Appellate Tribunal was justified in confirming

the addition of Rs.6,41,483/ on account of cash credit which was claimed to have been introduced as capital by proprietor in the business and whether the same does not amount to double taxation as being part of the gross profit estimated by the Tribunal?

3. The assessee is a Contractor. The return of income for the assessment year 2003-04 was filed on 22.10.2003 showing total income of Rs.12,86,800/-. The return was processed under section 143(1) of the Act on 11.12.2003. Thereafter, notices were issued under Section 143(2) and 142(1) of the Act. The learned Assessing Officer on verification of the documents noticed that the book of accounts maintained by the assessee does not reflect the true and correct income. Therefore, the Assessing Officer proceeded to estimate the net profit @ 12% of the turnover after allowing depreciation. The Assessing Officer also found that a sum of Rs.6,41,483/- had been introduced in the capital account which would be treated as unexplained cash credit under Section 68 of the Act.

4. The appeal on these two points against the said order before the Commissioner of Income Tax (Appeals) remained unsuccessful. However, in further appeal before the Appellate Tribunal, the learned Tribunal applied net profit rate of 8% as against 12% applied by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeal).

5. Learned counsel appearing for the appellant relies upon a Circular dated 31st August, 1965 to contend that in the



case of best judgment assessment, depreciation should have been allowed even when gross profit rate or net profit rate is applied. Since the appellant has claimed depreciation in the balance-sheet produced before the Assessing Officer, such amount of depreciation should have been allowed to be deducted from the net profit rate applied by the Assessing Officer and/or by the Tribunal.

6. However, we do not find any merit in this argument. Neither before the Assessing Officer or before the Commissioner of Income Tax (Appeals) or before the Tribunal, the appellant referred to the balance-sheet to contend that he should have been allowed depreciation after applying net profit rate. Once the Assessing Officer has found that net profit rate has been applied @12% after depreciation, one can infer that the Assessing Officer was conscious of the depreciation claimed by the assessee. Even if it was not so, the appellant has not made a grievance before the Commissioner or before the Tribunal to claim depreciation after applying the net profit rate. Since no argument was raised or examined by the authorities under the Act, the appellant cannot be permitted to raise a question of fact in an appeal before this Court for the first time.

7. In view of the said fact, the first question of law is answered in negative against the assessee and in favour of the revenue.

8. The learned counsel for the assessee fairly concedes that the second question of law does not arise for consideration.

9. In view of the said fact, we do not find any merit in the present appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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