

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
I.T.A.No.600 of 2015

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JUGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal under Section 260-A of the Income Tax Act, 1961 is preferred by the Revenue against the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench in I.T.A.No.1191 of 2011 for the assessment year 2006-07.

The respondent-assessee filed its return of income for the assessment year 2006-07 on 31.10.2006. After examining the profit and loss account, the assessing authority found that the assessee had debited various expenses to contract receipts, and had showed a net profit of merely Rs.26,76,740/- which was about 3.32%. On the ground that the information sought by the assessing officer was not furnished to him, and as the books of accounts were found to be incomplete, the assessing officer rejected the books of accounts and estimated the profits at 10% after taking into account the allowable depreciation, salary and interest. In addition, the assessing officer called upon the respondent-assessee to produce evidence regarding Rs.47,47,442/- shown in the balance sheet of the assessee as being payable to the sub- contractors. On the ground that no documentary proof was adduced in this regard, the entire sum of Rs.47,47,442/- was added back as the income of the assessee. Aggrieved thereby, the respondent-assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) who, following the earlier orders of the Tribunal, estimated the income on the contracts executed by the respondent-assessee at 9%, in the case of contracts taken by the assessee on sub-contracts at 8%, and for the contracts given by the assessee to third party at 5%. In addition thereto remuneration, interest on capital and depreciation, was allowed.

In so far as the addition of Rs.47,47,442/- is concerned, the Commissioner of Income Tax (Appeals) observed that, since there was

a liability to discharge, it would not cease; it would be required to be carried forward; and the assessing authority was not justified in adding back this amount when the liability was already included in the profits estimated as a percentage of the gross receipts. The assessing officer was directed to delete the addition of Rs.47,47,442/- as the liability had not ceased. Aggrieved thereby, the Revenue carried the matter in appeal to the Tribunal. In the order under challenge in this appeal the Tribunal, relying on its earlier orders passed with respect to the very same assessee for the earlier years, upheld the order of the Commissioner of Income Tax (Appeals) in estimating the profits of the assessee at 9%, 8% and 5% respectively before allowing deduction towards remuneration, interest on capital and depreciation.

In so far as deletion of Rs.47,47,442/-, added back by the assessing authority, is concerned the Tribunal held that, as the books of accounts of the assessee had been rejected and the profits had been estimated as a percentage of gross receipts, the basic precondition for application of Section 41(1) was not satisfied. Consequently the order of the Commissioner of Income Tax (Appeals) was upheld.

Before us, Sri B. Narasimha Sarma, learned Senior Standing Counsel for Income Tax, would reiterate the very same submissions urged by the revenue before the Tribunal. The Revenue does not also appear to have questioned the earlier orders passed by the Tribunal by way of appeals before this Court. No substantial question of law arises for consideration on the Tribunal upholding the order of the Commissioner of Income Tax (Appeals) in estimating the income of the respondent-assessee at 9%, 8% and 5% of the gross profits as the Tribunal has merely followed its earlier orders with respect to the very same assessee.

In so far as the addition of Rs.47,47,442/- is concerned, these additions were made on the ground that the assessee had failed to prove the genuineness of the transactions. The question of additions would not arise in cases where the income is estimated as a

percentage of receipts as, in cases where profits are estimated as a percentage of the contract receipts, the expenditure otherwise incurred by the assessee, apart from depreciation, interest on capital and remuneration, would not be taken into consideration. The Tribunal has, in our view, rightly held that, as the books of the assessee had been rejected and the profits had been estimated as a percentage of gross contract receipts, the basic precondition for application of Section 41(1), i.e allowance of the expenditure/liability has been made in the assessment for any previous year, was not attracted.

It is clear, therefore, that no substantial question of law arises for consideration necessitating interference in this appeal. The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:02.06.2016
JSU

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