THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.NOs.405 AND 406 OF 2015

COMMON JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

In both these appeals, filed under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), the Revenue questions the orders passed by the Income Tax Appellate Tribunal confirming the order passed by the Commissioner of Income Tax (Appeals).

The respondent-assessee was subjected to tax under the Act for failure to maintain proper books of accounts. Their income was estimated at 15% of the advances received during that particular financial year. On the assessee preferring an appeal there against, the Commissioner of Income Tax (Appeals) observed that the assessee had been consistently following the project completion method of accounting which was accepted by the Revenue; and there was no justifiable reason for the assessing authority to either reject the assessee's claim for being subjected to tax on completion of the project or to change the method of accounting from project completion method to percentage completion method. This view of the Commissioner of Income Tax (Appeals) found favour with the Income Tax Appellate Tribunal which noted that in the assessee's own case, for the assessment years 2001-2002 and 2003-2004, the additions had been deleted by the Tribunal on the very same issue. The assessing authority was directed to re-compute the assessment as per project completion method.

Sri B.Narasimha Sarma, learned Senior Standing Counsel for Income Tax, would submit that the Tribunal had erred in affirming the order of Commissioner of Income Tax (Appeals) since what was in issue before the Tribunal was primarily the failure of the assessee to maintain proper books of accounts.

While this submission of Sri B.Narasimha Sarma, learned Senior Standing Counsel, is not without merit and the revenue may well be justified in computing the income of the assessee at 15% of the amounts received, in the absence of proper books of accounts being maintained by the assessee, the question which would still necessitate consideration is whether computation of income at 15% should be on the amounts received based on the percentage completion method or the project completion method.

The method of accounting to be followed is primarily for the assessee to determine and, save justifiable reasons, the assessing authority would ordinarily accept the method of accounting consistently followed by the assessee. The assessment order does not disclose any reasons, much less justifiable reasons, for the assessing officer to reject the petitioner's claim for following the project completion method. Consequently computation of the income of the assessee, even if it were to be estimated at 15% in the absence of proper books of accounts being maintained can only be on the amounts received by the assessee as per the project completion method, and not the percentage completion method. We find no legal infirmity in the order of the Income Tax Appellate Tribunal, much less any substantial question of law, necessitating interference in these appeals.

Both these appeals fail and are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

1st June 2016

RRB