

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.169 of 2009 (O&M)
Date of decision: January 11, 2016**

Tara Singh Prop, M/s Rajdeep Bus Service GT Road, Khanna

..... Appellant

ITO Ward III Khanna

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Surjeet Bhadu, Advocate for the appellant.

Mr. Zora Singh Klar, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 25.9.2008 Annexure-P.3 passed by the Income Tax Appellate Tribunal, Chandigarh (in short, “the Tribunal”) for the assessment year 2001-02. It was admitted on 16.3.2009 to consider following substantial questions of law:-

- “i) Whether the Assessing Officer made an assessment by estimation of income arbitrarily without any reasons or findings?
- ii) Whether the Hon'ble Tribunal was right in estimation of income which is 22 seats per bus without any formula and basis?
- iii) Whether the findings of the Assessing Officer totally based on assumption and presumption are sustainable in the eyes of law?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant was the proprietor of M/s Rajdeep Bus Service, Khanna and M/s Ajmer Finance Company. These concerns deal with plying of buses and financing & leasing respectively. During the relevant period, the assessee was maintaining 11 buses for business purposes. The assessee filed statutory return of income for the assessment year 2001-02 and declared total income of ₹ 1,10,940/- and agriculture income of ₹ 1,03,000/- alongwith the audit report. The case was selected for scrutiny as per Board's instructions. Statutory notices under section 143(2) and 142(1) of the Act were issued to the assessee. During the assessment proceedings, the assessee was issued notice under Section 142(1) of the Act on 23.2.2004 and 15.3.2004 to furnish certain details/information/clarification. The assessee did not produce and/or file the information called for in such notices regarding production of books of account, bank pass books, explanation to show cause notices etc. The Assessing Officer while passing best judgment assessment

order under Section 144 of the Act enhanced the total income of the assessee for the assessment year 2001-02 to ₹ 19,43,860/-. Addition of ₹ 18,32,740/- was made on the basis of assuming the total occupancy of bus at the rate of 50% of the total capacity of 52 seats available per bus which was taken as 26 seats per bus. The total receipt from all the buses came to ₹ 1,05,90,840/- as against declared receipt of ₹ 77,13,524/-. It was gathered from the transport department that the said department allows breakdown of three days per month. The rebate out of bus fare equal to 36 days (12x3) was allowed and the total receipts were thus assessed at ₹ 95,46,264/-. Accordingly, an addition of ₹ 18,32,740/- was made to the returned income. Aggrieved by the assessment order, the assessee filed appeal before the Commissioner of Income Tax (Appeals). Vide order dated 8.2.2005, Annexure P.2, the CIT(A) deleted the addition of ₹ 18.32 lacs made by the Assessing Officer on the basis of occupancy of 26 seats per bus and directed the Assessing Officer to assess the income as per the books of account which was 19 seats per bus. The revenue filed appeal before the Tribunal. Vide order dated 25.9.2008, Annexure P.3, the Tribunal partly allowed the appeal and estimated the occupancy of seats at 22 per bus. The Assessing Officer issued demand notice dated 17.12.2008, Annexure P.4 of ₹ 1,84,797/- giving effect to the impugned order for recovery of the tax. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. Law in respect of best judgment assessment is well settled. The

assessing authority while making the best judgment assessment should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bonafide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not of anyone else.

5. The assessee was repeatedly issued notice under Section 142(1) of the Act for the production of books of account, bank pass books and to furnish certain information called for. The final notices dated 23.2.2004 and 15.3.2004 were issued to the assessee to which there was no response from the assessee and accordingly, the Assessing Officer passed 'Best Judgment Assessment' under Section 144 of the Act on 29.3.2004. The assessee as per profit and loss account declared total annual receipt from the bus fare at ₹ 77,13,524/-. The average receipt from all the buses on daily basis worked out to ₹ 21,133/-. In the books of account, the assessee credited amount of ₹ 19000/- to ₹ 21,500/- as receipt from bus fare on daily basis. However, the Assessing Officer proposed to adopt the total occupancy at the rate of 50% of total capacity of 52 seats available per bus and sought to make addition of ₹ 28,70,316/-. Show cause notice was issued to the assessee and after considering the reply submitted by the assessee, addition of ₹ 18,32,740/- was made to the returned income. On appeal by the assessee, the CIT(A) directed the Assessing Officer to adopt the

occupancy of 19 seats of each bus. The revenue challenged the order passed by the CIT(A) before the Tribunal. It was categorically recorded by the Tribunal that the moot question was the justification of estimation of seats. Due to mechanical defect, accidents, over speed challan, and other traffic violations, the buses might not be plied throughout the year. Even otherwise, the tax had to be calculated on net income. The Assessing Officer and the CIT(A) had estimated the occupancy of seats to the extent of 24 and 19 per bus respectively. The Tribunal deemed it appropriate to estimate the occupancy of seats at 22 per bus to put an end to the litigation. It may be noticed that for best judgment assessment, some guess work had to be adopted which should be based on rational basis and it cannot be arbitrary. It could not be demonstrated by learned counsel for the assessee that the Tribunal had adopted any arbitrary or irrational approach in arriving at the conclusion. Moreover, the assessee had failed to furnish the requisite information compelling the Assessing Officer to take recourse to Section 144 of the Act in framing the Best Judgment assessment.

6. Additionally, Annexure P.4 has been appended alongwith the appeal which is an order dated 17.12.2008 passed by the Assessing Officer giving appeal effect to the order of the Tribunal dated 25.9.2008 which reads thus:-

- | | |
|--|--------------|
| “1. Income as returned by the assessee | ₹ 1,10,940/- |
| 2. Receipt per day per seat calculated by the AO at the time of order u/s 144 dated 29.3.2004 ₹1116/- per day. | |

3. No. of days per year after
allowing three days per month
(36 days per year) for break down
as applied by the AO at the time of
assessment 329 days.

4. Total receipts during the year (22 seats occupancy) 1116x22x329	₹ 80,77,608/-
5. Less receipt shown by the assessee	₹ 77,13,524/-
6. Addition made as per ITAT's order	₹ 3,64,084/-
Total income after appeal effect	₹ 4,75,024/-

Say ₹ 4,75,030/-

A perusal of the above shows that only an addition of ₹ 4,75,030/- has been made against the income of ₹ 1,10,940/- declared by the assessee.

7. Learned counsel for the appellant-assessee relied upon plethora of judgments in *Commissioner of Sales Tax vs. H.M.Esufali H.M.Abdulali*, (1973) 90 ITR 271, *State of Kerala vs. C.Velukutty*, (1966) 60 ITR 239 (SC), *Anand Rice & Oil Mills vs. Commissioner of Income Tax*, (1977) 108 ITR 372 (Cal.), *State of Orissa vs. Maharaja Shri B.P.Singh DEO*, (1970) 76 ITR 690 (SC), *Surajmal Champalal vs. Commissioner of Income Tax*, (1967) 66 ITR 396 (Pat.), *Mysore Fertilizer Co. vs. Commissioner of Income Tax*, (1966) 59 ITR 268 (Mad.), *Commissioner of Income tax vs. Padamchand Ramgopal*, (1970) 76 ITR 719 (SC), *Seth Nathuram Munnalal vs. Commissioner of Income Tax*, (1954) 25 ITR 216 (Nagpur), *Aluminium Industries (P) Limited vs. Commissioner of Income Tax*, (1995) 80 Taxman 184 (Gau.), *Brij Bhushan Lal Parduman Kumar vs. Commissioner of Income Tax*, (1978)

115 ITR 524 (SC) and *International Forest Co. vs. Commissioner of*

Income Tax, (1975) 101 ITR 721 (J&K). There is no dispute with the proposition of law enunciated in these judgments with regard to the expression “Best Judgment Assessment”. However, in view of the factual matrix noticed hereinabove and more particularly when learned counsel for the assessee-appellant has not been able to satisfy this court that the approach of the Tribunal is arbitrary or irrational, no advantage flows to the assessee-appellant from those pronouncements.

8. In the present case, the view adopted by the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the impugned order. The substantial questions of law are answered accordingly. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 11, 2016
‘gs’

(Raj Rahul Garg)
Judge