

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : I. T. A. No. 17 of 2015

Reserved On : July 13, 2016

Pronounced On : July 21, 2016

Sukhvinder Singh Appellant

vs.

The Commissioner of Income Tax, Karnal Respondent

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Ms. Prerna, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondent.

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DEEPAK SIBAL, J. :

Through the instant appeal, invoking Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as – the Act), the assessee has knocked the doors of this Court to challenge therein the order dated 24.09.2012 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (hereinafter referred to as – the Tribunal).

The subject matter of the present appeal pertains to the

assessment year 2008-09 and through the same, the assessee seeks to raise the following substantial questions of law :-

“1. Whether the ITAT was justified in confirming addition @ 6% on estimation basis without considering the past record and arbitrary addition to declared income by the authorities below ?

2. Whether the order of the Tribunal is based on extraneous considerations and perverse deserve to be set aside being against the provisions of law ?”

After hearing learned counsel for the parties and perusing the record with their assistance, the relevant facts, which have emerged, are that the assessee, who is a Civil Contractor and is engaged in the business of construction of roads, for the assessment year in question, filed his return, which was processed under Section 143 (1) of the Act. His case was picked up for scrutiny and in the proceedings which ensued, the Assessing Officer found that the assessee had not produced before him the complete original vouchers and muster-rolls. It was further noted by the Assessing Officer that the copy of attendance cards, pertaining to the labour engaged by the assessee, which had been produced before him, were without names and addresses. In view of afore-noticed facts, after rejecting the books of accounts, the Assessing Officer assessed the assessee to tax after applying Net Profit Rate @ 12%.

The Assessing Officer further found that the assessee had not declared in the relevant assessment year the interest accrued on income tax

refunds to the extent of Rs. 55,630/- for the assessment year 2007-08 and finding the same to have been concealed, the same was also ordered to be added as part of the taxable income of the assessee.

The assessment order was challenged by the assessee before the Commissioner, Income Tax (Appeals), Karnal (hereinafter referred to as – the Commissioner), before whom the assessee submitted that he had produced on record original purchase vouchers, books of accounts, attendance cards with names of the labourers with their complete addresses, complete details of sundry creditors and the Net Profit Rate applied in the preceding years. On such basis, it was prayed that Net Profit Rate @ 2.5% be applied in his case. However, the Commissioner dismissed the appeal, which gave a cause to the assessee to further take the matter in appeal before the Tribunal. The assessee's case before the Tribunal was that original purchase vouchers, books of accounts, attendance cards of the labourers with their complete addresses, complete list of sundry creditors and the Net Profit Rate applied in the case of the assessee for the last several preceding assessment years had been produced by him but the same had not been considered and therefore, it was prayed that the matter be either remitted back to the Commissioner for fresh adjudication or that the appeal of the assessee be allowed by the Tribunal itself by reducing the Net Profit Rate to 2.5%. The Tribunal, while acknowledging that 83-90% of the purchase vouchers were available on record, chose not to remand the matter back for fresh adjudication on the ground that the remaining 10-17% vouchers were self made and thus, not verifiable. It was further held that

the labour attendance cards did not carry the addresses of the labourers. Still further, while relying on the Net Profit Rate of 6.5%, which was applied under an earlier order of the Tribunal, Net Profit Rate @ 6% was ordered to be applied for the assessment year in question. Aggrieved by the application of Net Profit Rate @ 6% and praying that the same be applied @ 2.5%, the assessee has filed the present appeal seeking to raise therein the substantial questions of law as reproduced earlier.

The Assessing Officer had rejected the books of accounts of the assessee primarily on the ground that complete original vouchers, muster-rolls and copy of attendance cards containing the names and addresses of the labourers had not been produced before him. After ordering such rejection, Net Profit Rate of 12% was ordered to be applied.

The record reveals that 83-90% of the purchase vouchers of various materials were produced by the assessee. Through an application dated 10.12.2010 (Annexure A-4), the assessee claims to have placed on the record of the authorities below the attendance cards with names and addresses of the labourers, complete list of sundry creditors and applied Net Profit Rate for earlier assessment years.

The Tribunal acknowledged the availability of purchase vouchers of various materials to the extent of 83-90% but failed to return any finding on the claim of the assessee with regard to having placed on the record the complete list of sundry creditors. So far as applying of Net Profit Rate is concerned, evidence was brought on record by the assessee that for the assessment year 2003-04, the applied Net Profit Rate was 3%,

for 2005-06 the same was 1.08% and for the preceding assessment year 2007-08, the same was 2.29%. Without spelling out any reasons for the same, the Tribunal ignored the above rates and chose to apply the Net Profit Rate of 6% by basing the same on the applied Net Profit Rate for only one of the earlier assessment years.

In view of what has been noticed above, in our opinion, the matter required deeper scrutiny at the hands of the Tribunal, which is the final fact finding Authority under the Act but on a perusal of the order of the Tribunal, the same is found lacking.

Mr. Yogesh Putney, Advocate appearing on behalf of the Revenue submitted that against the order of the Tribunal impugned in the present appeal, the Revenue, through **I.T.A. No. 28 of 2013 – The Commissioner of Income Tax, Karnal vs. Sukhvinder Singh**, had also come up in appeal before this Court. Through that appeal, the Revenue had assailed the order of the Tribunal with regard to application of 6% Net Profit Rate as according to the Revenue, the same should have been 12% as had been applied by the Assessing Officer. On 08.02.2016, the appeal was ordered to be dismissed as withdrawn through the following order :-

“Learned counsel for the appellant-revenue states that since the tax effect involved is ₹ 16,66,247/- he has instructions to withdraw the present appeal in view of the circular No. 21/2015, dated 10.12.2015 issued by the C.B.D.T., New Delhi. However, he prayed that liberty be

granted to the revenue to file an application for revival of the appeal in case something survives therein.

2. *Dismissed as withdrawn with liberty as prayed for. It is, however, clarified that withdrawal of the appeal by the revenue shall not be taken to be affirmation of order of the Tribunal on merits. Further, the legal issue as claimed by the revenue is being left open to be adjudicated in an appropriate case.”*

While referring to the afore-quoted order, learned counsel submitted that since the Revenue's appeal seeking enhancement in the Net Profit Rate had been dismissed as withdrawn only in view of the circular issued by the C.B.D.T., New Delhi and there having been no decision on merits, in case the matter is to be remanded back to the Tribunal, the Revenue should also be permitted to raise the issue for enhancement of the Net Profit Rate.

Ms. Prerna, who appeared on behalf of the assessee, opposed the grant of such prayer by urging that the appeal for enhancement having been withdrawn by the Revenue, this issue could not be permitted to be re-agitated inter se between the same parties.

We find merit in the afore-noticed submission made on behalf of the appellant-assessee. Once the Revenue, being bound by the circular of the C.B.D.T., New Delhi, has withdrawn its appeal seeking enhancement

of the Net Profit Rate, inter se the same parties, it cannot be allowed to re-agitate the issue. However, such observation on our part would not preclude the Revenue from moving any application for revival of the afore-referred appeal since the liberty for the same was granted by this Court while permitting the appeal to be withdrawn.

In view of the above, while setting aside the order dated 24.09.2012 (Annexure A-3), we remit the matter back to the Tribunal for a fresh decision on merits, which would be after scrutiny of all material placed before it by the assessee in accordance with law.

The appeal stands allowed in the above terms.

No costs.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

July 21, 2016
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