

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

ITTA NOs. 553 & 558 OF 2017

DATE: 08th NOVEMBER 2017

Between:

Principal Commissioner of Income Tax – I,
Visakhapatnam.

... Appellant

AND

M/s V. Dhana Reddy & Co.

... Respondent

Counsel for the Appellant : Sri K. Raji Reddy,
Senior Standing Counsel
for IT Department

Counsel for the respondent :



THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: *(per Hon'ble Sri Justice Challa Kodanda Ram)*

Revenue is before this Court invoking Section 260-A of the Income Tax Act, 1961 (for short, 'the Act'), challenging the common order dated 03.05.2013 of the Income Tax Appellate Tribunal, Visakhapatnam Bench for the Assessment Years 2007-08 and 2006-07 in I.T.A. Nos. 354/Vizag/2011 and 353/Vizag/2011 respectively, raising the following two substantial questions of law:

- (a) Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was correct in setting aside the order of the CIT passed under Section 263 of the IT Act on the ground that the Assessing Officer has taken one of the possible views whereas there did not exist any alternative to the only view that income from godown rent could be determinable independent of income from civil contract receipts having regard to the fact that normal expenditure in relation to rental receipts is far below that in relation to civil contract receipts?
- (b) Whether on the facts and in the circumstances of the case and in law the Appellate Tribunal was justified in placing reliance on the ratio of decision of the Bombay High Court in the case of M/s Gracim Industries Ltd. V. CIT (321 ITR 92) which dealt with entirely different facts relating to cessation of liability under Section 41(1) of the Act and which had no contextual relevance to the facts and circumstances of the present case?

The assessee is a partnership firm engaged in the business of stevedoring, clearing and forwarding, shore handling and steamer agency services. In response to the notice issued under Section 148 of the Act, the assessee filed returns of income on estimated basis at 7.5% of the gross receipts. Assessment was completed by the Assessing Officer estimating

the income at 10% of the gross receipts. The Commissioner of Income Tax (CIT) invoked Section 263 of the Act and initiated proceedings proposing to revise the orders of the AO. The CIT, after considering the explanation submitted by the assessee, had come to the conclusion that the AO erred in determining the income of the assessee at 10% on estimate basis in respect of godown receipts and hence, directed the AO to redo the assessment by assessing the godown receipts separately in addition to the income from contract receipts. In principle, the CIT (Appeal) found fault with the manner and method adopted by the AO on the ground that the same has resulted in underestimation of the total income. The assessee challenged the order of the CIT before the Income Tax Appellate Tribunal, on the specific ground that invocation of the provisions under Section 263 of the Act itself is not warranted, as the conditions precedent for such invocation are not satisfied.

Sri K. Raji Reddy, learned Senior Standing Counsel for Income Tax Department submits that for the AYs 2004-05 and 2005-06, on account of the disputes among the partners, though the firm had returned income on estimate basis, at 7.5% of the gross receipts, the AO initially proposed to enhance the

same to 12.5% and on the assessee placing the material before the AO for the AY 2004-05, the income was worked out at 10%. The AO also accepted the explanation of the assessee, for the earlier years, that the stevedoring, clearing and forwarding activities are integrally connected with godown rentals and as the assessee had not maintained the books, the methodology of estimating the income was adopted. The same is an acceptable method and there is no error committed by the AO. The assessee had also relied on the orders of the Tribunal in *Jeewanram Choudhary v. CIT*¹ and *Mookambica Constructions v. CIT* (ITANo. 25/Vizag/2009, dated 13.11.2009) to support its contention that the Revision could not have been made and there is no error in the Assessment Orders. Even with respect to AY 2005-06, the methodology followed for the AY 2004-05 was adopted.

The Tribunal, following the judgment of the Bombay High Court in *M/s Gracim Industries Ltd. V. CIT*² which had relied on the judgment of the Supreme Court in *Malabar Industrial Co. Ltd. v. CIT*³ had held that the AO, on appraisal of the facts and particularly, taking into consideration the undisputed fact that the books were not maintained by the

¹ (2013) 84 DTR (Jd)(Trib) 317

² 321 ITR 92

³ (2000) 243 ITR 83 (SC)

assessee, had adopted the method of estimation of the income and in the process, after taking into consideration the overall material before it, had estimated the income at 7.5% of the gross receipts. The view taken by the AO being a plausible one and even assuming there was another view possible, the CIT(Appeal) could not have invoked the revisional power under Section 263 of the Act, as it is well-settled that such ground is not available for revising the orders. In coming to this conclusion, the Tribunal had examined the material on record and did not accept the argument of the Revenue that the rentals from the godowns are required to be assessed at a higher rate of 12.5%.

In our opinion, as the AO had opined that renting of the godowns is integral in the business of the assessee and as the decision arrived at by the Tribunal being on appreciation of facts and the reason for invocation of Section 263 being that there is a possibility for estimating the income at a higher rate, without there being a finding of error in the Assessment Order, a resort to Section 263 of the Act cannot be made. In the absence of any other material placed before this Court, in the facts of the present case, question No.1 is required to be answered in favour of the assessee and against the Revenue.

In the light of the conclusion arrived at with respect to question No.1, question No.2 being a consequential one, it is not necessary for this Court to answer the same as, basically, it relates to the understanding and appreciation of the ratio of the judgment of the Bombay High Court, which, in fact, had followed the judgment of the Supreme Court in ***Malabar Industrial Co.Ltd. v. CIT*** and the case of ***CIT v.MAX India Ltd.***⁴. The ratio laid down by the Supreme Court in ***Malabar Industrial Co. Ltd.'s case*** and that of the Bombay High Court in ***M/s Gracim Industries Ltd.'s case*** squarely applies to the facts of the case on hand.

In those circumstances, both the Appeals fail and they are accordingly, dismissed. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

08th November 2017

ksld/am

⁴ (2007) 295 ITR 282