HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

ITTA.No.667 of 2017

Date:01.11.2017

Between:

M/s Andey Ranga Rao & Co.,

West Godavari District.

..... Appellant

And:

Income Tax Officer,

Palkol.

.....Respondent

Counsel for the appellant: Mr. Y.Ratnakar

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This appeal, under Section-260 (A) of the Income Tax Act, 1961 (for short 'the Act'), is directed against order, dated 05.6.2017, in ITA.No.407/Vizag/2016 on the file of the Income Tax Appellate Tribunal, Visakhapatnam 'SMC' Bench, Visakhapatnam (for short 'the Tribunal').

The facts in brief leading to the filing of this appeal are as follows:

The appellant is a partnership firm engaged in civil contract works. In the returns filed by it for the assessment year 2008-09, it has declared a total income of Rs.21,550/-. The Assessing Officer (AO) has noted that the appellant has shown an amount of Rs.6,02,000/- as 'Closing Stock' in the balance sheet, but the same was not reflected in the Profit and Loss Account. When clarification was sought for from the appellant, its authorised representative has agreed for making an addition of Rs.6,02,000/-. Accordingly, the said sum was included in the taxable income. Having so agreed, based on which, the AO has passed the assessment order, the appellant has questioned the assessment by filing an appeal before the Commissioner of Income Tax (Appeals) {CIT(A)}. He has sought to explain before the CIT (A) that the closing stock was adjusted against the purchase of materials such as metal (kankara), cement and iron and that only consumption of the material was debited to Profit and Loss Account. The CIT (A), however, rejected the said explanation and dismissed the appeal. The appeal filed before the Tribunal having also been dismissed, the assessee filed this appeal.

At the hearing, Mr. Y.Ratnakar, learned counsel for the appellant, has submitted that mere admission or concession made by the assessee does not disentitle him to question the assessment order if the same is not in accordance with law. He has further submitted that though proper explanation was offered by the appellant before both the appellate authorities, neither of them considered the same.

As regards the concession, assuming that the appellant is entitled to question the assessment order if the same is not otherwise in accordance with law, we find from the impugned order that the Tribunal has not only relied upon the concession made by the appellant but also referred to the merits of the case.

In paragraph-8 of the impugned order, the Tribunal observed as under:

> "In this case, the assessee has shown an amount of Rs.6,02,000/- in the balance sheet as closing stock, but the same was not reflected in the Profit and Loss Account. When Assessing Officer asked the assessee, he agreed for addition. Accordingly, Assessing Officer made

> the addition. On appeal, Id. CiT (A) after considering the explanation of the assessee, confirmed the addition made by the Assessing Officer. Before us, the assessee has not filed any material or any explanation as to why the amount of Rs.6,02,000/- is not reflected in the Profit and Loss Account. Therefore, by considering the facts and circumstances of the case, we are of the opinion that the authorities below properly examined the issue and made the addition. The assessee is not able to point out any error in the order passed by the Id. CIT (A), hence, we find no infirmity in the order of the Id. CIT(A)."

It is trite that an appeal under Section-260 (A) of the Act is maintainable on substantial question of law. In this appeal, the question of law raised, i.e., whether the appellant has adjusted the closing stock against the value of the material purchased from the supplier or not, is a pure question of fact with reference to which the Tribunal has rendered the above-mentioned finding that no material has been produced as to why the sum of Rs.6,02,000/- is not reflected in the Profit and Loss Account. Therefore, in our opinion, no question of law, much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

01st November 2017
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