

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No.444 of 2017

Date: 15.11.2017

Between:

Director of Income Tax (Intl Taxn.,)
Hyderabad

...

Appellant

And

M/s. Limak Construction Industries &
Trade Co., 8-2-623/5/1/1, Avenue-4,
Banjara Hills, Hyderabad.

...

Respondent

Counsel for the Petitioner : Mr. B.Narasimha Sarma,
Senior Standing Counsel for
the Income Tax Department

Counsel for the Respondent: -----

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The short issue that was decided by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (for short 'the Tribunal'), was, whether the assessee was entitled to adopt completion method of contract and whether the Revenue is justified in insisting on making assessment based on percentage completion method.

2. A perusal of the order of the Tribunal shows that it has referred to the Accounting Standard 7 (AS 7), which permitted either of the two methods, namely, percentage completion method or completion method of contract. The Revenue has made assessment, adopting completion method of contract. While reversing the orders of the Assessing Officer as well as the Commissioner of Income Tax (Appeals), the Tribunal held as under:

“Long term construction contracts which run for more than one accounting year have been treated separately because of the peculiarities of that activity like the uncertainties and future risks, fulfillment of contractual obligations only after the completion of the contract etc. Therefore separate accounting standards have been prescribed for long term construction contracts and the applicable accounting standard in India being Accounting Standard 7 (AS 7). In principle there are two accounting methods prescribed for accounting long term construction contracts: 1). percentage completion method and 2). completion method of contract. Both the methods are scientific and fall within the mercantile method of accounting. The enterprise is free to choose either method of accounting depending on the circumstances existing in a particular construction contract. In the present case the assessee company adopted completion method of contract as it has taken up construction activity for the first time in India and is new to business environment and not sure of overall result of the contract. Moreover the assessee is not allowed under Foreign Exchange Management Act to remit the profits back home until the completion of the contract and it is not proper to declare profits in its global balance sheet without power to appropriate the same. Moreover, this is the only contract secured by the assessee in India

at that point of time and not sure of continuing business operations in India after the completion of the contract. Further, there is no back ward carrying of losses and in the event of losses on the completion of contract after having declared profits in the initial years, the assessee will end up paying taxes even while incurring losses. For all these reasons it was claimed by the assessee, that they have opted for completion method of contract and followed the same consistently.

As per the provisions of Section 145 of the Income Tax Act, the profits of the business must be computed in accordance with the method of accounting regularly employed by the assessee. The choice of method of accounting lies with the assessee. The only thing is that the assessee must follow the chosen method regularly. Even for the very first accounting year, in the instant case, for the assessment year 2002-03 the method of accounting should be deemed to have been regularly employed if the same method shown to have been employed in the subsequent assessment years. As stated earlier, the assessee had been following the same method of accounting regularly in the subsequent assessment years. Therefore the mandatory provisions of 145 would apply and the assessing officer is bound to accept the assessee's choice of method of accounting, which could not be rejected merely because an alternative method of accounting is preferred by the assessing officer".

3. In our opinion, the findings rendered by the Tribunal are in conformity with AS No.7 and, therefore, this order does not suffer from any error in law or on fact. Hence, no substantial question of law arises for consideration in this appeal.

4. The Appeal is accordingly dismissed.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Date: 15th November, 2017

msb

