THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

I.T.T.A.Nos.436, 442, 445, 450 and 452 of 2017

COMMON ORDER: (per SK,J)

These appeals by the Revenue under Section 260A of the Income-tax Act, 1961, seek to raise the following substantial questions of law for consideration:

(i) 'Whether on the facts and in the circumstances of the case, the order of the Tribunal is perverse?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the method of accounting adopted by the assessee is correct method of accounting?'

These questions are framed in the context of the common order dated 31.08.2009 passed by the Income Tax Appellate Tribunal, Visakhapatnam Bench, in so far as it pertains to the appeals by the respondent/assessee and the Revenue in relation to the assessment years 2000-01 to 2006-07. Admittedly, the respondent/assessee did not maintain books of accounts. By virtue of the Central Board of Direct Taxes (CBDT) Circular bearing No.21/48/68 IT (Inv) dated 26.02.1969, he adopted the process of calculating net profit on the basis of net worth/net wealth. The Assessing Officer was however of the opinion that the profit should be computed by applying the net profit rate to the gross receipts. Dealing with this issue, the Tribunal opined that when two options were available to the assessee, i.e., either to compute the profit by applying the net profit rate to the gross receipts or by taking the net worth basis, it was his choice as to the mode of accounting he would adopt. Reference was made to various judicial pronouncements in this regard that held the mode of accounting to be the choice of the assessee. The Tribunal further found upon examination of the assessment orders that the

Assessing Officer found no specific defect in the mode of calculation of profit by the respondent/assessee on the basis of net worth. The Tribunal therefore concluded that the method of accounting adopted by the respondent/assessee was within his discretion and there was no infirmity in application of the said method for determining the profits of the years in question.

We find no perversity in the findings of the Tribunal. It is an admitted fact that the CBDT's own circular permits the adoption of the mode of accounting utilised by the respondent/assessee in the absence of books of accounts. When the Assessing Officer found no defect in the application of such mode of accounting, it was not open to him to dispense with the said method of accounting and adopt his own method basing on surmises. We therefore find no question of law, much less a substantial question of law, arising in these appeals.

The appeals are accordingly dismissed at the threshold. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE GUDISEVA SHYAM PRASAD

Date:18.07.2017

GJ