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

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No. 396 OF 2017

DATED 07TH NOVEMBER, 2017

Between:

The Commissioner of Income Tax-IV,
Hyderabad … Appellant

AND

M/s. Narasimha Murthy & Co,
3-6-365, Himayathnagar,
Hyderabad … Respondent

Counsel for the appellant : Sri J.V.Prasad

Counsel for the respondent : Smt. K.Neeraja

THE COURT MADE THE FOLLOWING

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

This appeal by the Revenue is filed against order dated 14-08-2013 in I.T.A.No. 1167/Hyd/2012 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench "B", Hyderabad (for short, 'the Tribunal').

2. The undisputed facts are that the respondent-assessee is a partnership firm engaged in the profession of cost auditors at Hyderabad. For the assessment year 2006-07, it filed its return of income declaring the total income as Rs.2,80,344/-. The income was processed under Section 143 (1) of the Income Tax Act, 1961 (for short, 'the Act'). Noticing the discrepancy between the receipt shown in the TDS Certificate filed along with the return and the receipt shown by the assessee in the Profit and Loss Account, the Assessing Officer reopened the assessment and action was initiated under Section 147 of the Act. Based on the same, the Assessing Officer completed the assessment by bringing to tax the differential amount of Rs.7,79,792/-. Feeling aggrieved by the said assessment, the respondent-assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appeal having been dismissed, the assessee filed an appeal before the Tribunal. The Tribunal allowed

the appeal, following the order of Kolkata Bench in ***Meheria Reid & Co. Vs. ITO***[1], holding that assessment cannot be reopened merely because there is discrepancy between the professional income declared by the assessee and the professional income as per TDS Certificate. The Tribunal also relied upon its earlier order dated 05-04-2013 in ***M/s. Vansun Erectors Pvt. Ltd. Vs. ITO***[2]. In addition, the Tribunal also observed that the assessee was following cash system of accounting showing the income on receipt basis.

3. At the hearing, Sri J.V.Prasad, learned senior standing counsel for Income Tax Department, has placed reliance on Clause (c) (i) of explanation 2 of Section 147 of the Act and submitted that as the respondent underassessed the income chargeable to tax, the Assessing Officer reopened the income. As noted hereinbefore, the Tribunal set aside the reassessment order following the decision of Kolkata Bench as well as its earlier order holding that mere discrepancy between the professional income declared by the assessee and the professional income as per TDS Certificate does not constitute a ground for such reassessment.

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[1] 81 DTR (Cal. Trib.) 376
[2] I.T.A.No. 456/H/2012

4. In the light of the above, the question of reopening of the assessment on the ground of underassessment does not arise. Hence, the appeal is dismissed.

C.V.NAGARJUNA REDDY, J.

CHALLA KODANDA RAM, J.

Date: 07-11-20-17.
JSK