IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27253 of 2016
Date of decision: 15.05.2017

Shri Sanjay Kundu

……Petitioner

Vs.

Commissioner of Income Tax, Rohtak

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. B.M. Monga, Advocate with
Mr. Rohit Kaura, Advocate
for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Article 226 of the Constitution of India is for quashing the impugned order dated 30.03.2015 (Annexure P-9) passed by the Commissioner of Income Tax, Rohtak, (CIT) under Section 264 of the Income Tax Act, 1961 (in short "the Act"), rejecting the petition filed by the petitioner under Section 264 of the Act and thereby confirming the assessment order dated 15.03.2013 (Annexure P-4). Direction has also been sought to the CIT, Rohtak, for reconsideration of the petition filed by the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner-assessee is an individual based at Rohtak. He is engaged in the business

of Civil Contractor and is providing services mainly to the Government sector. He filed return of income tax for the assessment year 2010-11 on 25.05.2010, declaring income at ₹ 1,74,500/-. The return was processed under Section 143(1) of the Act on 15.03.2011. On 31.03.2012, the petitioner revised return declaring income at ₹ 4,84,627/-. The return of the petitioner was selected for scrutiny on 10.09.2012 and notice under Section 143(2) of the Act was issued. The petitioner appeared through his counsel. He was directed to supply books of account alongwith relevant vouchers. The petitioner submitted audited balance sheet and ledger accounts. The Assessing Officer directed the petitioner to produce complete bills/vouchers of expenses and also to furnish addresses to whom payment of these expenses had been made. The Assessing Officer vide assessment order dated 15.03.2013 (Annexure P-4) rejected the audited balance sheet and ledgers submitted by the petitioner and made assessment under Section 145(3) of the Act, applying net profit rate of 12% at ₹ 62,07,890/- against returned income of ₹1,74,500/-. The Assessing Officer imposed penalty of ₹ 25,000/- under Section 271A of the Act on the ground that the petitioner was not maintaining complete books of account, the bills and the vouchers. Further, penalty of ₹ 1,00,000/- under Section 271B of the Act was imposed upon the petitioner on the ground that he had not filed audited accounts though the audited balance sheet was provided to the Assessing Officer and the same was rejected by him. The Assessing Officer also imposed penalty of ₹ 17,66,904/- under Section 271B of the Act. Aggrieved by the orders, the petitioner filed petition under Section 264 of the Act before the CIT *inter alia* on the ground that the Assessing Officer, passed the assessment order due to extraneous considerations; record of the case was not perused and that enquiry may be made in the case as it was a case of no-voice before the Assessing Officer. Vide order dated 30.03.2015 (Annexure P-9), the Commissioner of Income Tax rejected the petition filed by the petitioner under Section 264 of the Act. According to the petitioner, he had provided all the relevant documents to his counsel, but unfortunately he could not concentrate on his legal work because of prolonged illness of his only son who later on died on 14.01.2015. Further, the petitioner was pre-occupied in the treatment of his cousin brother-in-law residing with him at Rohtak and getting treatment of cancer at PGIMS, Rohtak, who also died on 20.04.2016. Thus, the counsel of the petitioner could not act diligently leading to the adverse assessment order and the revisional order. Hence, the instant petition by the petitioner before this Court.

3. We have heard learned counsel for the petitioner.

4. Admittedly, the assessee filed original income tax return on 25.05.2010 declaring income of ₹ 1,74,500/- which was processed under Section 143(1) of the Act. He filed revised return on 31.03.2012 declaring income of ₹4,84,627/- under the head business and profession. During the year under consideration the assessee had shown gross receipts from the contract at ₹ 5,17,32,000/- and declared net profit of ₹ 4,85,000/-. The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued. No one on behalf of the petitioner attended the proceedings. No reply was filed. Thereafter, various opportunities were provided from 05.11.2012 to 15.01.2013 but the assessee failed to produce the books of account and the relevant vouchers. On a perusal of the assessment order and the order passed by

the (CIT) under Section 264 of the Act, we find that more than sufficient opportunity was provided to the assessee to explain his case of furnishing books of account and other relevant material. The assessee failed to avail the opportunity provided by the Assessing Officer on several occasions. Even during those instances where authorized representative of the assessee appeared, complete details were not filed. Accordingly, the profit rate of 12% to the gross receipts of the assessee was held to be quite reasonable on the basis of the material available before the Assessing Officer. Thus, the CIT finding no errer in the order passed by the Assessing Officer, rightly concurred with the view taken by the Assessing Officer and rejected the petition filed by the petitioner under Section 264 of the Act.

5. Even before this Court, the petitioner-assessee was provided opportunity to demonstrate that the profit rate of 12% adopted by the Assessing Officer was higher and unreasonable. The assessee had filed the certificate of gross profit rate and net profit rate for the Assessment years 2010-11 to 2014-2015 (Annexure P.12) which reads thus:-

"CA Arvind Krishan Associates

Chartered Accountants

Certificate

It is hereby certified that financial of M/s Sanjay Kundu Contractor r/o V.P.O. Bhali Anandpur, Distt Rohtak are as under:-

Financial year	**Turnover (Rs.)**	**G.P. (Rs.)**	**G.P. %**	**N.P.(Rs.)**	**N.P. %**
2009-10	5,17,32,437.00	12,49,371.87	02.42	4,84,626.87	00.94
2010-11	2,23,77,429.00	9,86,376.00	04.41	3,82,000.00	01.71

2011-12	38,30,983.00	8,95,415.00	23.37	3,10,474.00	08.10
2012-13	6,61,66,279.00	39,82,326.00	06.02	8,91,650	01.35
2013-14	1,76,36,529.00	20,79,827.85	11.79	5,49,504.00	03.12

For Arvind Krishan Associates
Chartered Accountants
Stamp and Sign (M.No. 90184)
(Prop.)

Date:- 09.03.2017

Place:- Rohtak
Office Near Soham Mandir, Green Road, Rohtak-124001 Ph: (O) 01262-250409 email:arvindjaintax@gmail.com

A perusal of the aforesaid Chart shows that there had been lot of variation in the profit rate of the assessee during these years and therefore, in the absence of production of books of account by the assessee, no benefit can be derived by him by claiming profit rate as applicable then. Moreover, the order passed by the (CIT) is dated 30.03.2015. The present petition has been filed after one year and eight months. Learned counsel for the petitioner has not been able to produce any material on record to substantiate his claim made in the petition. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 15, 2017 (Harinder Singh Sidhu)
'gs' Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**