IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-22095-CII-2016 and
ITA-28-2013 (O&M)

Date of Decision: 10.7.2017

The Commissioner of Income Tax, Karnal

....Appellant.

Versus

Shri Sukhvinder Singh

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.

PRESENT: Mr. Yogesh Putney, Senior Standing Counsel, for the appellant.

Mr. Rajiv Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

CM-22095-CII-2016

1. This is an application for recalling the order dated 8.2.2016 passed by this Court and for revival of the appeal.

2. On 8.2.2016, learned counsel for the appellant submitted that since the tax effect involved was ₹ 16,66,247/-, he may be allowed to withdraw the appeal in view of Circular No. 21/2015 dated 10.12.2015 issued by the Central Board of Direct Taxes, New Delhi with liberty to file an application for revival of the appeal in case something survives therein. Accordingly, the appeal was dismissed as withdrawn vide order dated 8.2.2016 with liberty as prayed for with the clarification that withdrawal of the appeal by the revenue shall not be taken to be affirmation of order of the

Tribunal on merits. Further, the legal issue as claimed by the revenue was left open to be adjudicated in an appropriate case.

3. After hearing learned counsel for the parties and perusing the application for recalling the order dated 8.2.2016 and the reasons recorded therein which is supported by an affidavit, the order dated 8.2.2016 is recalled and the appeal bearing ITA-28-2013 is revived.

4. CM stands disposed of accordingly.

ITA-28-2013

1. In view of the order of even date passed in CM-22095-CII of 2016, the appeal stands revived. At the joint request of learned counsel for the parties, the appeal is taken up for hearing today itself.

2. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 24.9.2012 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1233/CHD/2011, for the assessment year 2008-09, claiming the following substantial questions of law:-

> (i) Whether under the facts and circumstances of the case, the Ld. ITAT was right in law in directing the Assessing Officer to apply net profit rate @ 6%, whereas complete bills and vouchers have not been maintained by the respondent-assessee?
>
> (ii) Whether under the facts and circumstances of the case, the Tribunal order is sustainable for determination of income by distinguishing the nature of work contract i.e. Building contract or

Road contract in view of judgment of jurisdictional High Court in the case of Prabhat Kumar, Sirsa v. CIT (293 of 2008)?

3. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee is a civil contractor and engaged in the business of construction of roads. He filed his original return on 30.9.2008 for the assessment year 2008-09 declaring total income at ₹ 20,44,670/-. The said return was processed under Section 143(1) of the Act on 31.1.2010. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Act were issued along with questionnaire. The assessment was framed by the Assessing Officer vide order dated 28.12.2010 (Annexure A-1) under Section 143(3) of the Act at ₹ 98,59,980/- by applying net profit @ 12% of gross receipt of ₹ 8,17,02,906/- after reducing material supplied by the Government Department for ₹ 80,122/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. The CIT(A) vide order dated 29.9.2011 (Annexure A-2) dismissed the appeal. Against the order of the CIT(A), the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 24.9.2012 (Annexure A-3) partly allowed the appeal by directing the Assessing Officer to make addition on account of net profit rate @ 6%. Hence, the present appeal by the revenue.

4. The order of the Tribunal dated 24.9.2012 (Annexure A-3) was also assailed by the assessee who had filed ITA No. 17 of 2015. This Court vide order dated 21.7.2016 (Annexure CM-3) allowed the appeal and set aside the order, Annexure A-3. Further the matter had been remitted to the

Tribunal for a fresh decision on merits after scrutiny of all material placed before it by the assessee in accordance with law. It had also been noticed therein that such observation would not preclude the Revenue from moving any application for revival of the present appeal since the liberty for the same was granted by this Court while permitting the appeal to be withdrawn.

7. In view of the above, after hearing learned counsel for the parties, the appeal is allowed and the order dated 24.9.2012 (Annexure A-3) passed by the Tribunal is set aside. The matter is remanded to the Tribunal to adjudicate the issue on merits after affording an opportunity of hearing to the parties in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

July 10, 2017 **(AMIT RAWAL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes/No**