IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.339 of 2016 (O&M)
Date of decision: 02.05.2017

Shri Kamal Kishore

....Petitioner

Versus

Commissioner of Income Tax, Leela Bhawan, Patiala

....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. S.K. Mukhi, Advocate, and
Mr. Rajiv Sharma, Advocate, for the appellant.
Mr. Z.S. Klar, Sr. Standing Counsel, for the respondent-revenue.

AJAY KUMAR MITTAL, J. (ORAL)

CM No.545-CII of 2017

Written statement on behalf of the respondent filed along with the application is taken on record subject to all just exceptions.

CM stands disposed of.

ITA No.339 of 2016

This appeal has been filed under Section 260A of the Income Tax Act, 1961(in short 'the Act') against the order dated 11.02.2016 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, for the assessment year 2009-10 claiming following substantial questions of law:-

> "A. Whether the Income Tax Appellate Tribunal, is justified in concurring with the findings of CIT(A) in rejecting the application for additional evidence under given facts and circumstances of the case as filed under Rule 46A of the Income Tax Rules 1962, there being reasonable cause, and hence in not admitting the additional evidences for not filing the same before the authorities below by clearly defying well

settled law that where the documents have bearing on the case, the same need to be taken into consideration by the competent authorities as was held in the case of **TEK RAM (DEAD) THROUGH LR'S VS. CIT 93 DTR 350 (SC**)?

B. Whether the Income Tax Appellate Tribunal, is justified in concurring with the findings of CIT(A) in rejecting the application for additional evidence being chart of comparable cases alongwith supporting documents under given facts and circumstances of the case though holding these not to be additional evidences but not taking the same into consideration and thereby confirming the application of NP rate of 1% which is against the facts of the present case and being unreasonably high in the same nature of trade as that of the appellant it being a last fact finding body by clearly defying well settled law that comparable cases is one of the best evidence for estimating of GP/NP rate and also that it was the bounden duty of the AO to have brought on record the comparable cases or any other tangible material for arriving at estimate rate of GP/NP which he failed to do so?

C. Whether the ITAT is justified in concurring with findings of the authorities below and thereby confirming the impugned addition of Rs1,00,000/- and Rs.61,281/- without appreciating the fact that in cases of estimation of income as per GP/NP no further deductions are to be made except for depreciation and interest and also no additions or disallowances are called for in view of trite law and the judgment of this Hon'ble Court in the case of **COMMISSIONER OF INCOME TAX VS. GIAN CHAND LABOUR CONTRACTORS 316 ITR 127 (P&H**) and also held in the case of **COMMISSIONER OF INCOME TAX, JALANDHAR-II, JALANDHAR V. M/S AGGARWAL ENGG. CO. (JAL.), JALANDHAR CANTT.** ITA No.113 of 2006 dated 24.07.2006 wherein this Hon'ble High Court reiterated the law laid down by Hon'ble the Allahabad High Court in **COMMISSIONER OF INCOME-TAX V. BANWARI LAL BANSHIDHAR, (1998) 229 ITR 229**?

D. Whether the ITAT is justified in concurring with findings of the authorities below and thereby confirming the impugned addition on account of income returned of Rs.1,46,400/- without appreciating the fact that in cases of estimation of income as per GP/NP no further additions or disallowances are called for?

E. That the findings of ITAT in confirming the impugned additions without adhering to various contentious, evidences and additional evidences filed which is perverse and illegal?"

2. After arguing for some time, learned counsel for the appellant submitted that he may be allowed to withdraw this appeal with liberty to the appellant to file an application under Section 254(2) of the Act before the Tribunal.

3. Dismissed as withdrawn.

4. However, it shall be open to the appellant to take recourse to the remedies as may be available to him in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 02, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No