

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.344 of 2011

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THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE -2,
MUZAFFARPUR

... .. Appellant/s

Versus

M/S SALAUDDIN. C/O TRISHUL CONSTRUCTION, CHHATRADHARI
BAZAR, CHAPRA

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rishi Raj Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-06-2018

This is Revenue's appeal under Section 260A of the Income Tax Act calling in question tenability of an order passed by the Income Tax Appellate Tribunal in ITA No. 111/Pat/ 2010 for the assessment year 2004-05. The order is dated 10.12.2010 and the Revenue feels aggrieved by the impugned order to the extent of disallowing certain additions said to have been made by the learned Commissioner for Income Tax under Section 40(a)(ai) of the Income Tax Act (hereinafter referred to as 'the Act').

The assessee in question submitted a return for tax and the total income was declared at Rs.82,35,555/-. The main source of income was from contract awarded to the assessee by the Railway and Public Works Department and the assessee had



disclosed a total receipt of Rs.1581.26 lacs for the year in question as against receipt of Rs.1285.89 lacs for the previous year. The Assessing Officer found that rate of net profit declared for only 5% of turnover against 5.10% for the preceding year. The Assessing Officer rejected the Books of Accounts under Section 145(3) of the Act and determined the net profit at the rate of 8% of the total contract received and accordingly determined the income of the assessee at Rs.1,26,50,146/-. The assessee challenged the same before the learned Commissioner (Appeals) and the Commissioner (Appeals) having made addition of Rs.47,42,596/- on the basis of profit not disclosed the matter travelled to the Tribunal and the Tribunal in paragraph-11 of the impugned order decided the issue in the following manner:-

“11. From the above para of the order of the ITAT in the assessee's own case for the same assessment year, we find that it is observed by the ITAT that taking into account the totality of facts and circumstances of the case, action of Assessing Officer to estimate the income by applying net profit rate of 8% is upheld. Once the books of the assessee has been rejected and the income of the assessee was estimated @ 8% of the turnover, the Assessing Officer cannot take help of the same books of account to make any further disallowance on the basis of entries in such rejected books of account. Considering this aspect of the case, we are in agreement



of the learned Commissioner (Appeals) that once income is estimated by the Assessing Officer after rejecting the books of account of the assessee, no further disallowance can be made by the Assessing Officer. The judgment of Hon'ble Andhra Pradesh High Court rendered in the case of Inwell Construction vs. CIT (supra) also, supports this view. In that case also, the income of the assessee was estimated by the Assessing Officer at Rs.2.50 lacs after rejecting the books of account under sec. 145 of the Act. Against this assessment order, learned Commissioner was of the view that this assessment order is erroneous and prejudicial to the interest of the revenue and after invoking the provisions of Section 263 of the Act, it was held by him that a sum of Rs.63,859/- should be further added which was shown as interest and salary paid to the partners in the P & L account. Under these facts, it was held by the Hon'ble Andhra Pradesh High Court that once estimate is made, all the deductions which are referred to under sec. 29 are deemed to have been taken into account while making such an estimate and this will also meet that the embargo placed in sec. 40 is also taken into account. Respectfully following this judgment of Hon'ble Andhra Pradesh High Court, we uphold the order of the learned Commissioner (Appeals) on this issue."

Now it is canvassed before us that once the addition was made based on the statutory provision the Tribunal committed an error in rejecting the same and, therefore, it is stated that the



substantial question of law arises for consideration is as to whether the addition made as per the statutory provision could be interfered with in a manner done.

Having heard learned counsel for the parties and on analyzing the reasons that weighed with the Tribunal for rejecting the justification given by the learned Commissioner (Appeals), we find that the Tribunal has not committed any error. Once the Books of Account were rejected and the profit was estimated @ 8% of turnover, then, the same Books of Account cannot be relied upon for the purpose of making addition under the provision of Section 40 of the Act. In doing so, the Tribunal has not committed any error. We do not find any substantial question of law warranting reconsideration.

The appeal is therefore dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

AFR/NAFR	NAFR
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