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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 428/2018

PR. COMMISSIONER OF INCOME TAX,

DELHI- 20

..... Appellant

Through Mr. Raghvendra Singh, Jr. Standing
Counsel

versus

SMT. MEENAKSHI AGGARWAL

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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27.08.2018

This appeal filed by the Revenue under Section 260A of the Income-tax Act, 1961 ("Act" for short) in the case of Meenaksi Aggarwal relates to assessment year 2009-2010 and arises from the order of the Income Tax Appellate Tribunal ('Tribunal' for short) dated 30.10.2017 passed in ITA No. 687/Del/2014.

2. We have heard junior standing counsel for the Revenue who submits that the Assessing Officer during the assessment proceedings had sent repeated notices to the respondent-assessee who had failed to produce books of accounts and audit report etc. This factum has been ignored and not taken into consideration by the Tribunal while passing the order of remand.

3. The Tribunal has adversely commented on the conduct of the respondent/assessee who had not appeared before the Assessing Officer, and had also failed to produce books of accounts, audit report etc. To this extent there cannot be any dispute or debate.

4. The issue in the present case relates to quantification of the income made by the Assessing Officer in the Assessment order dated 29.12.2011, after invoking Section 144 of the Act. The Assessing Officer without any discussion had estimated the net profit rate at 2% of the declared turnover. We reproduce the reasoning given by the Assessing Officer on the said aspect, and the same reads:-

“The assessee has declared a turnover of Rs. 20,75,18,242/- during the year under consideration as per the details in ITR 4 form. As per the details available on record, the known bankers of the assessee were sought to furnish the copy of bank accounts of the assessee for the year under consideration. However the credits appearing in the bank accounts are not verifiable in the absence of any details/narrations etc. furnished by the assessee. The assessee has not filed even a single reply/detail w.r.t. his business affairs.

In the prevailing circumstances, I am not satisfied with the correctness and completeness of assessee's books of accounts and trading results declared there from. Therefore, the trading results declared by the assessee are hereby rejected within the meaning of Section 145(3) as proposed vide the above referred show cause notices for which the assessee has not filed any objection. This being a time barring matter. I have no other alternative but to conclude the proceedings as per my best judgment u/s 144 of the Act. The assessee has declared NP at the rate of 0.61 %. It is worthwhile to refer to the fact that the assessee has grossly failed to furnish the requisite details/documents/evidences w.r.t. all the expenses claimed in the trading & P/L account and even the sale purchase of the assessee has remained unverified. Therefore, in the absence of requisite details/documents w.r.t. points no. 4 to 11 of the above referred questionnaire, I am not satisfied that the expenses were incurred wholly and exclusively for the purposes of

business as contemplated in Section 37 of the Income Tax Act. In the best judgment order, I have to resort to certain kind of guess work and estimation owing to the fact that that the assessee has furnished NIL details/documents/explanations etc. Therefore, I hereby estimate the NP rate at 2% of the declared turnover. The NP @2% comes to Rs. 41,50,365/-. Therefore the amount of Rs. 41,50,365/- is taken as income from business of the assessee for the year under consideration.”

5. The Commission of Income Tax (Appeals) vide order dated 29.11.2013 had reduced and estimated the net profit rate at 1% of the turnover. The first appellate order again is without reasons. The relevant portion of the said order reads as under:-

“7. Ground Nos. 6, 7 & 8 are against the rejection of books u/s 145(3) and the estimation of appellant's income at Rs. 41,50,365/- being 2% of the turnover of the appellant. The assessment order as well as the appeal is silent regarding the business carried out by the appellant. The assessment order only states that appellant had declared a net profit rate of 0.61% and the A.O. estimated the net profit at 2%. As this adhoc-estimation of 2% is not based on any comparable case or evidence I am of the view that it is excessive and the estimated net profit is reduced to 1% of the turnover. Since, the total turnover of the appellant as per the assessment order is Rs. 20,75,18,242/- , the estimated net profit at 1% is Rs. 20,75,183/- only. Thus the addition of Rs. 20, 75,183/- is sustained and the appellant gets a relief of Rs.20,75,182/- . Thus, ground no. 6, 7 & 8 are allowed.”

In the aforesaid circumstances the Tribunal was compelled to pass an order of remand, requiring the Assessing Officer to examine the net profit rate, which has to have some basis and cannot be a mere guesswork. On remand, the net profit rate is to be adjudicated and

fixed by the Assessing Officer.

6. The Assessing Officer had also invoked Section 41 (1) of the Act to make addition of Rs.1,52,67,037/- on account of cessation or remission of liability as the assessee had failed to appear in the adjudication proceedings and had not been able to establish genuineness of the unsecured loans and sundry creditors recorded in the books of account. The said addition was deleted by the Commissioner of Income Tax (Appeals) without a remand report by accepting plea that addition was not justified once the books of accounts were rejected.

7. In view of the aforesaid factual background, the Tribunal has remitted the issue of addition under Section 41(1) of the Act to the Assessing Officer to be decided afresh. Keeping in mind the nature of the controversy and the provision invoked, the Tribunal had observed that opportunity to be heard would be given to the assessee. This observation was required and necessary as the Assessing Officer had invoked Section 41 (1) of the Act. It is possible that during the course of remand proceedings the Assessing Officer may like to invoke and rely on some other provision.

8. Recording the above reasons, we observe that the appeal has no merit and is dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 27, 2018/b