THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

I.T.T.A. NO.415 OF 2016

ORDER: (per SK,J)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961, in relation to the Assessment Year 2005-06, raises the following substantial questions of law for consideration:

'6.1 Whether on the facts and circumstances of the case and in law, the ITAT was correct in holding that the assessment order was not erroneous or prejudicial to the interests of revenue, though disallowance under section 40 (a) (ia) of the Act was not examined by the Assessing Officer?

6.2 Whether on facts and in circumstances of the case and in law, the Hon'ble ITAT is correct in holding that once the issue of gross contractual receipts was considered by the Assessing Officer, it was not open for the CIT to go into it proceeding under Section 263 of the Act?

6.3 Whether on facts and in circumstances of the case and in law, the Hon'ble ITAT is correct in holding that once the income of the Assessee was estimated by rejecting the books of account, the assessing Officer cannot make any disallowance under section 40(a)(ia) of the Act, 1961.

6.4 Whether on facts and in circumstances of the case and in law, the Hon'ble ITAT is correct in deleting the disallowance made u/s. 40 (a) (ia) of the I.T. Act by following the decision of the Hon'ble High Court in the case of Indwell Constructions (232 ITR 776) without appreciating the fact that the said decision was rendered before incorporating the provisions of section 40 (A) (ia) of the Act W.e.f. 01.04.2005?

6.5 Whether on the facts and circumstances of the case and in law, the ITAT was correct and justified in interpreting the word "payable" appearing in sec. 40 (a) (ia) of IT Act as "payable on 31st March of accounting year" by relying upon the ratio in the case of Merilyn Shipping Transporter Vs. CIT (TDS) 136 ITD 23 (SB) (Vizag) and thereby not appreciating and ignoring the ratio of decision in the case of CIT, Kolkatta XVIII vs. Md. Jakir Hossain Mondal [2013] 33 taxman. Com 223 which ruled that the decision in the case of Merilyn Shipping & Transport as above does not constitute a good law?

6.6 Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is correct in holding that if the profit is estimated, then there is no scope of allowability/disallowability of any deduction without appreciating the fact that the statutory disallowances under section 43B and 40(a)(ia) were made as applicable to all the assesses irrespective of method of determination of profit?'

2. Insofar as the issue of disallowance under Section 40 (a) (ia) of the Act of 1961 is concerned, a Division Bench of the High Court for the State of Telangana and the State of Andhra Pradesh, comprising the then Hon'ble The Chief Justice and one of us (SK,J), had occasion to consider the issue in I.T.T.A.No.430 of 2014. By order dated 17.07.2014, while dismissing the Revenue's appeal, the Division Bench observed as under:

> 'We are of the view that amendment or no amendment, if the profit is estimated on any ground, whether ignoring books of accounts or rejection thereof, then there is no scope for allowability/disallowability of any deduction. In our considered view, the above provision mentions how to consider the same when the books of accounts are available and the same shall be accepted on fact by the authorities below.'

3. We are now informed by Ms.K.Mamatha, learned senior counsel for Revenue, that the aforestated order of the Division Bench has been confirmed by the Supreme Court by virtue of the dismissal of the SLP at the threshold.

4. In that view of the matter, it is not open to the Revenue to assert any right to allow or disallow any deductions once the books of accounts are rejected. Such an option would arise only in the event the books of accounts are accepted.

5. In the light of the aforestated decision, which we are not inclined to disagree with, the main questions of law sought to be raised presently stand settled against the Revenue. In consequence, the incidental questions which are sought to be raised would not survive for independent consideration.

6. The appeal is accordingly dismissed on the aforestated grounds. No order as to costs.

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SANJAY KUMAR,J

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P.KESHAVA RAO,J

Date:09.08.2019
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