DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1359 OF 2017

Pr. Commissioner of Income Tax-31 Mumbai ..Appellant
vs.
Chandan Jangid
Prop. Welldone Concept ..Respondent

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Mr. Sham V. Walve a/w. Mr. Pritish Chatterjee for appellant.

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CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 6 JANUARY 2020

P.C.:-

Heard learned counsel for the Appellant.

2. The present Appeal relates to Assessment Year 2010-11.

3. By this appeal filed under Section 260A of the Income Tax Act, 1961, the Appellant challenges the order dated 28/10/2016 passed by Income Tax Appellate Tribunal ('Tribunal' for short).

4. The Appellant has framed the following questions of law as a substantial questions of law :-

"A. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal (ITAT) has erred in restoring the matter to the file of the

Assessing Officer (AO) to examine the correct net profit ratio of the assessee as assessed in the past and in the subsequent years, ignoring the fact that in the event of bogus purchases being found, the past history of the assessee has no relevance ?

B. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal (ITAT) has erred in restoring the matter to the file of the Assessing Officer (AO), in view of the decision of the Supreme Court in the case of ***N.K. Proteins Ltd.****, wherein the Apex Court has confirmed the High Court's decision upholding the 100% addition made by the AO on account of bogus purchases ? "*

5. The Respondent – Assessee is engaged in the business of Interior Designing & Contractor. He had shown his sales/receipts at Rs.10,16,97,391/-, work-in-progress at Rs.1,74,86,972/-, purchases aggregating to Rs.9.17,19,684/-. The net profit ratio was declared at 11.48%. Accordingly, total income of Rs.1,18,36,390/- was shown in the return of income for the Assessment Year 2010-11. As the Respondent – Assessee had shown his total income at Rs.1,18,36,390/-, the Assessing Officer issued notice to the Respondent – Assessee in respect of the details of the parties from whom the Respondent – Assessee had made purchases and received advances. After details were so furnished, the Assessing Officer issued notice to the parties and after conducting the inquiry and perusal of material on record, the Assessing Officer

rejected the assessee's book results and estimated the net profit ratio at 20% and added further income of Rs.86,64,618.

6. In the Appeal, remand report was submitted by the Assessing Officer to the Commissioner of Income Tax (Appeals). After order passed by the Commissioner of Income Tax (Appeals), the Appeal of the Respondent – Assessee was considered by the Tribunal. The Tribunal observed as under :-

> *"This is evident from the remand report of the Assessing Officer as well as the counter submissions made by the assessee before the CIT(A). However, the CIT(A) has rejected all those submissions and evidences and proceeded to call for the stock register, delivery challans of goods, work orders, etc. After calling for the records, he observed that firstly, work orders are not fully verifiable ; secondly, stock register and delivery challans were either not produced or assessee could not correlate the purchases with the sales ; lastly, the material purchased are not backed by delivery challans on the sites. On these reasons, he affirmed rejection of books of accounts. However, he reiterated the Assessing Officer's estimation of 20%, again without bringing any material on record to support why such a high net profit rate should be applied. If it has been found that assessee's books of accounts are not properly maintained or the correctness or completeness of the accounts have not been found to be satisfactory, then it is incumbent upon the Assessing Officer to make the best judgment assessment under section 144 after taking into account the relevant material gathered by him during the course of the assessment proceedings. The best judgment assessment u/s. 144 does not entail that the assessment has to be made on a*

> *high pitch income by resorting to wild estimate without looking into the records of the assessee or brining any material or comparable case to justify such a high estimation of profit. In the matter of estimating the profit rate for the purpose of best judgment assessment, the assessee's past or subsequent history is to be looked into or some comparable case engaged in similar line of business or having similar attributes has to be identified and brought on record and after carrying out some comparable analysis a reasonable net profit rate/GP rate can be applied. Here in this case, no basis has been given for estimating the net profit rate of 20% albeit from the assesseee's own records, it is seen that the net profit rate from the Assessment Year 2008-09 to 2012-13 have been ranging between 9.30% to 11.40%. The details of turnover as well as net profit rate have been given before us in the following manner :-*

Assessment Year	***Turnover***	***Net Profit***	***N.P.%***	***Asst. Made***
2008-09	*2,37,61,883*	*22,57,196*	*9.50%*	*143(1)*
2009-10	*8,26,10,547*	*76,81,499*	*9.30%*	*143(3)*
2010-11	*10,16,97,391*	*1,16,70,275*	*11.48%*	*Under dispute*
2011-12	*12,10,16,765*	*1,16,70,275*	*11.48%*	*143(1)*
2012-13	*15,04,42,377*	*1,44,28,503*	*9.50%*	*143(3)*

> *Hence, the assessee's net profit ratio has been ranging approximately at 11.5% then Department has to be given a proper justification as to why net profit rate of 20% should be applied."*

The Tribunal found that the Assessing Officer, while estimating the net profit at 20% had proceeded on the basis of stock register, delivery challans of goods, work orders, and there was no application of mind for deriving at the figure of 20%. The

Tribunal, therefore, found it fit to remand the proceeding to the Assessing Officer. We have not been shown as to how the finding regarding non application of mind by the Assessing Officer is incorrect. The Tribunal has rightly emphasised on the need to scrutinise the relevant aspects while working out the estimation, and not to arrive at the same in a haphazard manner.

7. The Tribunal, while disposing of the appeal has not given conclusive findings but has made certain observations to emphasis the need for remand. The Tribunal has made these observations only to emphasis that there are various aspects for the Assessing Officer could have taken into consideration.

8. In these circumstances, the questions of law as framed do not give any rise to any substantial question of law.

9. The Appeal is accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane
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