IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.171 of 2019

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1. Principal Commissioner of Income Tax- Muzaffarpur
2. Assistant Commissioner of Income Tax Circle-1(1), Muzaffarpur

... ... Appellant/s

Versus

M/s Singh Construction Pvt. Ltd. Satpura Colony, Aghoria bazar, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rishi Raj Sinha, Advocate
Ms. Shilpi Keshri, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-02-2021

Having heard Shri Rishi Raj Sinha, learned counsel for the appellants as also perused the record of revenue, this Court finds no reason to interfere, for the Court is not satisfied of the case involving any substantial question of law.

Facts cannot be re-appreciated, as is sought to be urged before us. The Tribunal, while considering the contention raised by the Revenue, of suppression of percentage of profit, has returned the finding in paragraph no. 3 of the impugned order which is reproduced hereinunder:

> "3. Mr. Sinha vehemently contends during the course of hearing that the Assessing Officer had rightly made the impugned disallowance for lack of

> substantiation of the expenditure in question at the assessee's behest during the course of scrutiny. We make it clear that the department is fair enough in not disputing all other heads of turn over, income and expenditure per se. It only seeks to revive the impugned estimation. The CIT(A)'s above extracted findings hold that the assessee has already declared its profits in tune with various jurisdictional precedents relating to Contract business. He has properly, kept in mind the said profit rate @6% (supra) for modifying the impugned disallowance from 4% to 1%. Learned Departmental Representative fails to indicate any illegality or irregularity therein at the time of hearing. It transpires that the Assessing Officer had not even compared assessee's expenditure claims with those allowed in earlier assessment years under various heads. We therefore affirm CIT(A)'s findings granting part relief to the tax payer. The instant lead appeal ITA No.146/Pat/2018 fails."

We find that such finding is based on the cogent material emanating from the record.

It is the case of the Revenue that against the gross receipt of Rs. 62 crores (approximately), the net income declared was just 5.81%, which is Rs. 3.64 crores (approximately), and ought to have been on the higher side. Further, it is argued that disallowance ought to have been to the extent of 4% instead of 1%.

Significantly, the appellate authority itself recorded that in cases of civil contractors, business alike to one carried out by the assessee, the net rate of profit accepted by the parties is 6%. In this view of the matter, marginal difference of 0.19%, less than the accepted rate of profit cannot be said to be under valued, warranting interference by this Court, more so, when the matter is based on factual matrix. Significantly, at no point in time, the Revenue ever challenged the authenticity and correctness of Audit Report, certifying the correctness of the books of accounts maintained by the assessee.

Hence, impugned order dated 26.09.2018 passed by the Tribunal in I.T.A. No. 146/Pat/2018 is affirmed.

Appeal stands dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

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CAV DATE	
Uploading Date	12.02.2021
Transmission Date	