HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T. VINOD KUMAR

Income Tax Tribunal Appeal Nos.40 and 41 of 2020

COMMON JUDGMENT : *(Per Sri Justice M.S.Ramachandra Rao)*

These two Appeals arise between the same parties in relation to Assessment Years 2013-14 and so they are being disposed of by this Common Judgment.

2. These Appeals are filed under Section 260-A of the Income Tax Act, 1961 by the Revenue assailing Order dt.05.09.2019 passed in I.T.A.No.1886 / HYD / 2018 and Order dt.05.09.2019 passed in I.T.A.No.2151 / HYD / 2018.

3. The respondent-Assessee was engaged in the business of erection of Boilers and Turbines in Power Plants, Coal Feeding and Transportation and O & M of Power Plants.

4. The respondent-Assessee filed its original return of Income on 18.09.2013 declaring a total income of Rs.4,01,01,350/-.

5. There was a *Search and Seizure* operation under Section 132 of the Act in the case of the respondent-Assessee on 14.12.2015 wherein certain discrepancies were noticed in the Labour charges as recorded in the Profit and Loss Account, as compared to the Profit and Loss taken from the Books of Accounts taken in *Tally Package*.

6. The respondent-Assessee debited expenditure to the tune of Rs.13,17,47,585/- whereas the Tally Package disclosed actual labour charges incurred to the tune of Rs.7,32,22,284/- and salaries of Rs.60,80,512/-, totaling to Rs.7,93,03,796/-. The difference is Rs.5,24,42,789/-.

7. The Assessing Officer treated the same as undisclosed income of the Assessee and added this amount to the disclosed income holding that there was inflation of labour charges and suppression of profits and computed the tax payable.

8. Thereafter, the respondent-Assessee preferred an Appeal before the Commissioner of Income Tax (Appeals).

9. Initially, by order dt.06.08.2018, the Commissioner of Income Tax (Appeals), granted partial relief to assessee by holding that the entire amount cannot be brought to tax, and it is only the income portion of the labour charges which is to be brought to tax. He further observed that the Net Profit offered by the Assessee is 9.28%, and so he accordingly applied the same i.e 9% to the additional income admitted during the course of search and brought it to tax.

10. Aggrieved by the confirmation of part of the addition, the respondent-Assessee filed I.T.A.No.1886 / HYD / 2018 before the Income Tax Appellate Tribunal, Hyderabad Bench, at Hyderabad; and against the relief given by the Commissioner of Income Tax (Appeals), the Revenue filed I.T.A.No.2151 / HYD / 2018.

11. By Common Order dt.05.09.2019 passed, the Tribunal allowed the Appeal filed by the Assessee and the Appeal filed by the Revenue was dismissed.

12. The Tribunal held that though there is a difference between the Ledger extract in the Books of Accounts and the Tally Package maintained in the Computer amounting to Rs.5,24,43,789/- in the labour charges, the Executive Director of the respondent-Assessee in his statement under Section 132(4) of the Act admitted such undisclosed income, but the entire portion cannot be treated as Assessee's income. The Tribunal further held that the Commissioner of Income Tax (Appeals) had recorded that Net Profit of the Assessee is to be estimated at 9% of main contract works and at 6% on sub-contract works; and when finally he disposed of the Appeal, the Commissioner of Income Tax (Appeals) directed the Assessing Officer to adopt 9% of the total turnover which was arrived at before the search. The Tribunal held that the Commissioner of Income Tax (Appeals) had not taken into consideration the fact that the Assessee is both the main contractor as well as sub-contractor and so it deemed it fit and proper to modify the directions of the Commissioner of Income Tax (Appeals) to the Assessing Officer directing him to re-compute the Net Profit at 9% of the turnover on the main contract and 6% of the turnover on account of sub-contracts.

13. Challenging the same, the present Appeals are filed.

14. Sri K. Raji Reddy, learned Senior Standing Counsel, appearing for Revenue, contended that when such huge discrepancy was noticed in the labour charges as recorded in the Profit and Loss Account *and* the Profit and Loss taken from the Books of Accounts maintained in the Tally Package, and the Executive Director of the Assessee has admitted in the statement given under Section 132(4), the Income Tax Appellate Tribunal ought to have dismissed the Appeal filed by the Assessee, and allowed the Appeal filed by the Revenue. He drew the attention of this Court to the answer given by the Executive Director to Question No.39 which is as under :

> ***"Q.39 : Do you want to say anything ?***
>
> ***Ans.*** *Considering the omissions and discrepancies noticed in our company's books of accounts and evidences gathered, we are admitting Rs.15.00 crores as undisclosed income over and above our regular income already accounted for. The bifurcation of the above undisclosed income of Rs.15 crores assessment year wise is as under :*

F.Y.2012-13	*Difference in Gross receipts*	*Rs.1,33,50,839.00*
F.Y.2012-13	*Inflated labour charges booked*	*Rs.5,24,43,789.00* ============
F.Y. 2014-15	*-do-*	*Rs.3,35,84,422*
F.Y. 2014-15	*Bogus sub contractors*	*Rs.5,06,20,950*

15. But the answer given by the Executive Director to Question No.35 put to him under Section 132(4) of the Act is also relevant and we quote the same as under :

> ***"Q.35 :*** *I am showing you the Annexure / Mech / 13 in which page 76 shows the labour charges booked to the extent of Rs.7,32,23,284/- and salaries is Rs.60,80,512/- but in the same FY 2012-13, the salaries and wages are booked to the extent of Rs.13,17,47,585/- as per copy of P & L account filed along with return of income, vide page 83 of the same annexure. Please explain the difference ?*

> ***Ans :*** *<u>Readily I am not in a position to explain the above discrepancy. I may be allowed time for 2 days to reconcile and furnish my explanation.</u> If I fail to furnish any explanation with satisfactory evidence within two days, the same may be considered as unaccounted income in the hands of the company for the Asst. Year 2013-14."(emphasis supplied)*

16. Therefore, when answering to Question No.35, the Executive Director stated that readily he was not in a position to explain the discrepancy and if he is allowed two days' time he would furnish his explanation, it appears that this answer to Question No.35 was ignored and the answer given by him to Question No.39 put to him shortly thereafter was relied upon.

17. Be that as it may, the Commissioner of Income Tax (Appeals) had accepted that there is a difference in Labour charges of Rs.5,24,43,789/- and had not allowed the same to escape assessment. While the Assessing Officer had brought the entire amount to tax, the Commissioner of Income Tax (Appeals) had held that the entire amount cannot be brought to tax and it is only the income portion of the Labour charges which is to be brought to tax and he then levied 9% to the additional income admitted and brought it to tax. The Tribunal modified it as 9% of the turnover on the main contracts and 6% on the turnover on account of sub-contract works.

18. We are of the view that the above finding of the Tribunal is based on the finding recorded by the Commissioner of Income Tax (Appeals) himself that the Net Profit of the assessee is to be estimated at 9% on main contract works and 6% on sub-contract works.

19. The Tribunal specifically observed that the Commissioner of Income Tax (Appeals) could not have adopted 9% net profit on this entire amount and he ignored the fact that the appellant was also working both as a main contractor and a sub-contractor.

20. Therefore, the finding of the Tribunal appears to be in consonance with the findings of the Commissioner of Income Tax (Appeals), and it did not commit any error in directing the Assessing Officer to re-compute the Net Profit at 9% of the turnover on the main contracts and at 6% of the turnover on the sub-contract works. These are finding of facts and no substantial question of law arises for consideration in Appeal under Section 260-A of the Income Tax Act, 1961.

21. We therefore find no merit in the Appeals and they are accordingly dismissed. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in these Appeals, shall stand closed.

M.S.RAMACHANDRA RAO, J

T.VINOD KUMAR, J

Date: 24.02.2021
Ndr