

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA-61-2021 (O&M)

Date of decision : 06.08.2022

Chief Commissioner of Income Tax OSD Ludhiana Appellant

Versus

M/s. Ceigall India Ltd., Ludhiana

.... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajesh Katoch, Sr. Standing Counsel and
Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel
for the appellant.

PANKAJ JAIN, J.

This appeal has been preferred under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') filed by the revenue impugning the order of Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') dated 19.11.2020.

2. Respondent is an assessee under the Income Tax Act. The assessment for the year 2014-15 was completed under Section 143(3) of the Act vide order dated 29.12.2016. The returned income of Rs.2,63,82,490/- was assessed and enhanced to Rs.8,21,93,828/-. Books of the accounts were rejected under Section 145(3) of the Act. Addition was made by applying net provide rate @ 12% on total gross receipt. Further addition under Section 69C of the Act was made on account unexplained expenditure.

3. Aggrieved by the order passed by Assessing Officer under Section 143(3) of the Act, the assessee filed an appeal before CIT(A).

The same was partly allowed. The addition made by applying net profit

rate of 12% on the total gross receipt was reduced to 6.5% of the total gross receipt. Addition under Section 69C of the act on account of unexplained expenditure was deleted. The order passed by CIT(A) was taken in appeal before ITAT by the revenue. The appeal filed by the revenue stands dismissed.

4. We have heard counsel for the appellant and have gone through the records of the case.

5. Learned ITAT while dealing with the issue of net profit rate to be applied held as under:-

“xx xx xx

20. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that the income of the assessee was worked out by applying the net profit rate and rejecting the books of accounts. Therefore in view of the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to cases relied by the Ld. Counsel for the Assessee i.e; CIT Vs. Vinod Kumar (supra) and CIT Vs. Chopra Brothers (supra). However, we deem it appropriate to restore this issue to the file of the A.O. to verify as to whether the claim of the assessee for depreciation was allowed by him or not, as was claimed by the Ld. CIT DR during the course of hearing. Accordingly this issue is restored to the file of the A.O. for the limited purpose i.e; to verify as to whether the depreciation was already allowed to the assessee or not and if not allowed then by considering the ratio laid down by the Hon'ble Jurisdictional High Court, the claim of the assessee for depreciation is to be allowed from the income determined by applying the net profit rate of 6.5%.”

6. While dealing with the issue of addition of unexplained expenditure, ITAT held that the issue is no more *res integra* and has been adjudicated upon by the Allahabad High Court in '**CIT vs. Banwari Lal Banshidhar**' holding that:-

“When the gross profit rate was applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases made by the assessee.”

7. A similar view has been taken by the Hon'ble Andhra Pradesh High Court in the case of '**Indwell Constructions Vs. CIT**' reported in 232 ITR 776 held as under:-

“The pattern of assessment under the Income-tax Act, 1961, is given by section 29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in sections 30 to 43D of the Act. Section 40 provides for certain disallowances in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under section 29 is to be made under section 145 on the basis of the books regularly maintained by the assessee. If those books are not correct or complete the Income-tax Officer may reject those books and estimate the income to the best of his judgment. When such an estimate is made, it is in substitution of the income that is to be computed under section 29. In other words all the deductions which are referred to under section 29 are deemed to have been taken into account while making such an estimate. This will also mean that the embargo placed in section 40 is also taken into account.

Where the books of account have been rejected, the

Revenue cannot rely on the same books for addition of an exact item (of expenditure) in the profit and loss account.”

8. In view of the abovesaid facts and circumstances, we find that no substantial question of law arises in the present appeal for adjudication by this Court. Consequently, the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

06.08.2022

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Whether speaking/reasoned : Yes

Whether Reportable : No