IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.51 of 2011

==

M/s Salauddin, a partnership firm having its office at Chhatradhari Bazar, Chapra P.O Chapra, P.S. Bhagwan Bazar, District-Saran through its partner Salauddin son of late Md. Wazuddin resident of Chhatradhari Bazar, Chapra P.O Chapra, P.S. Bhagwan Bazar, District- Saran.

... ... Appellant/s

Versus

1. Commissioner of Income Tax, Muzaffarpur having its office at Bela Kothi Muzaffarpur.
2. Additional Commissioner of Income Tax, Range-2, having its office at Bela Kothi, Muzaffarpur.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. D.V. Pathy, Advocate
For the Respondent/s	:	Mr. Harshwardhan Prasad, Advocate
		Mrs. Archana Sinha, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2023

1. The assessee, a works contractor, was before the statutory authorities against the estimation made of profit at the rate of 8% on the basis of an order with regard to an altogether different assessee; overlooking the estimate of profit at the rate of 6% in the case of the appellant itself in three preceding assessment years, which was negatived by the statutory authorities.

2. As far as consideration of depreciation, it was contended that merely because of an estimation carried out, the claim of depreciation cannot be overlooked. Learned counsel for

the appellant also relied on the decision of this Court in M.A. No. 56 of 2011 (Trishul Constructions Vs. Commissioner of Income Tax, Muzaffarpur & Anr.), which considered the aforesaid questions.

3. The questions of law are identical and are as follows:-

> "*(i) Whether the order of the Tribunal in adopting the estimate of profits at the rate of 8 percent on the basis of an order in an altogether different case, overlooking the estimate of profit @ 6 percent in assessment year 2003-04 by the Tribunal itself in the assessee's case, runs counter to the rule of consistency?*
>
> *(ii) Whether in view of the rule of consistency, in the absence of any material change in the nature of business activity, the Tribunal ought to have followed the estimate of profits made in the assessment year 2003-04 in the case of the appellant itself?*
>
> *(iii) Whether the order of the Tribunal refusing consideration of depreciation, runs contrary to the mandate of law?*"

4. Insofar as the question nos. (i) and (ii), the answer is found in paragraph nos. 5, 6 and 7, which is extracted hereunder:-

> "5. The question raised as (i) and (ii) are answered together. Any estimation is based on

the best judgment of the Assessing Officer and if it is reasonable, there is no reason for the Appellate Authorities or even this Court to substitute the same for yet another reasonable view. There is also no rule of consistency applicable in estimations, as the factors regulating profits fluctuate from year to year and every assessment year brings forth a different cause of action.

6. The assessee was a railway contractor carrying on works for very many years. It cannot be assumed that the net profit of the assessee would have been the same for all the years. The mere fact that in the assessment year, twice prior to the relevant assessment year, the Assessing Officer had adopted an income of 6% would not restrict the estimation of net profit to that, for all time to come.

7. The Assessing Officers, rightly reckoned the profit margin of similar businesses in the relevant assessment year to estimate the net profit at 8%."

5. We find absolutely no reason to interfere with the question of estimation, as the facts on which the law is to be applied are identical.

6. On the question of depreciation, this Court has answered the issue in paragraph no. 9, which is extracted hereunder:-

"9. On the question of depreciation, the learned counsel for the assessee relied on ***Shyam Bihari v. Commissioner of Income-Tax and Anr.; [2012] 345 ITR 283 (Patna).*** We extract paragraph number 10 and 11 of the said decision.

10. We have been taken through the provisions of circular of the Board dated August 31, 1965. According to that circular which is binding on the department and its authorities, where it is proposed to estimate the profit and the prescribed particulars have been furnished by the assessee, the depreciation allowance should be separately worked out. In all such cases, as per the circular, the gross profit should be estimated and the deductions and allowance including the depreciation allowance should be separately deducted from the gross profit. If the net profit is required to be estimated, it should be estimated subject to the allowance for depreciation and the depreciation allowance should be deducted therefrom.

11. Since it is the case of the appellant that the authorities should not apply the principles emanating section 44AD of the Act but should be guided by the binding circular of the Board, we find it necessary not only to set aside the order of the Tribunal but also the orders of the Assessing Officer and the learned Commissioner of Income-tax (Appeals) as those orders also suffer from error of law on both the points. Accordingly, this appeal is allowed and the order under appeal passed by the Tribunal,

> *the appellate order of the leamed Commissioner of Income-tax (Appeals), Patna, and also the order of the Assessing Officer are set aside and the matter is remitted back to the Assessing Officer for passing a fresh order of assessment in accordance with law keeping in view the questions of law as answered by this court.*"

7. The question of depreciation would be considered independently by the Assessing Officer for which a remand shall be made.

8. The appeal stands partly allowed answering questions : (i) & (ii) against the assessee and in favour of the revenue while question : (iii) is answered in favour of the assessee, to the extent of the remand made.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/shiv

AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.09.2023.
Transmission Date	N/A