IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-228-2013 (O&M)
Date of decision:- 01.03.2023

Mahavir Rice Mills ....Appellant

vs.

Commissioner of Income Tax, Karnal ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pankaj Jain, Sr. Advocate
Mr. Divya Suri, Advocate
for the appellant.

Ms. Gauri Neo Rampal, Sr. Standing counsel
for the respondent.

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Ritu Bahri, J.

The present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short 'Act 1961') seeking setting aside of order dated 28.03.2013 (A-3) passed by Income Tax Appellate Tribunal, Chandigarh Bench 'E' passed in ITA-158/Del/2012 dated 22.02.2013 for the assessment year 2008-2009.

The case in brief is that the appellant is engaged in business of manufacturing and trading of Rice and trading of paddy. The assessee/appellant filed the return of income on 06.10.2008 (A-1) at an amount of Rs.10,32,186/-, which was processed and proceedings under Section 143 (2) of Act 1961 were conducted. The assessment was completed under Section 143 (3) for the assessment year 2007-2008 on 07.09.2009 (A-2). On 29.11.2010, the proceedings were completed and addition of Rs.1,01,016/- was made and keeping in view the provisions of Section 40 (a) (ia) of the Act 1961 payment of Rs.1,01,016/- made to Satake India Engg (P) Ltd on account of AMC was disallowed. Further Rs.56,650/- incurred on purchase of UPS held to be capitalized and depreciation was ordered to be charged on it. Rs.7650/- were added to the income of the assessee on account of telephone expenses, as the assessee admitted the expenditure incurred on account of telephones installed at residences. Further addition of Rs.2,00,000/- was made on account of sale of rice, as no stock was maintained by the assessee quality wise and quality of different quality of rice produce from milling of paddy could not be ascertained. Rs.6236/- were added on account of foreign travelling expenses. The details of computation of income are given below:-

Income returned	Rs.1032186/-
Add:-	
On account of ground nut:-	Rs.87500/-
On account of AMC:-	Rs.101016/-
On account of UPS:-	Rs.56650/-
On account of telephone expenses:-	Rs.7650/-
On account of sale of rice	Rs.2,00,000/-
On account of foreign travel expenses	Rs.62631/-
Total Income	Rs.1538870/-

The appellant preferred appeal against order 29.11.2010 before Commissioner of Income Tax (Appeals) Karnal, which was dismissed on 01.11.2021 and against this order, the appellant preferred appeal before Appellate Tribunal, which was also dismissed on 22.02.2023. Hence the present appeal.

At the very outset, learned counsel for the appellant is relying upon Division Bench judgment of this Court in a case of ***ITA No. 615-2008 titled as Inderjit Mehta Construction (P) Ltd vs. Addl. Commissioner of Income Tax, Bathinda, decided on 06.08.2013 wherein following substantial question law were answere in favour of the appellant:-***

> *"(ii) Whether the ld ITAT is justified to interfere in the well reasoned findings given by the 1st Appellate Authority to the effect that there is no valid ground to disallow the expenditure of Rs.3 lacs out of Rs.3.50 lacs claimed by the assessee, from the total receipts made by it, in contract receipts?*
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> *(iii) Whether on the facts and circumstances of the cases, there are any basis for making any addition of Rs.2,50,000/- in the total income of the assessee by disallowing expenditure, on surmises and conjenctures without finding any discrepancy in Audited books of account?"*

While allowed the appeals, it has been observed that all the three authorities had acted on surmises and guess work while sustaining the additions of different amounts. Further the authorities were required to have some material to come to the conclusion that the addition was required in the case and not just because the case was selected for scrutiny that the addition was to be made. No justification have been pointed out by learned counsel for the revenue, the addition of Rs.2,50,000/- maintained by the Tribunal, cannot be sustained.

On the other hand, learned counsel appearing for the revenue has referred to a judgment of this Court in a case of ***S.P. Construction vs. Income Tax Officer, Ward 1 (4), Chandigarh, (2016) 68 taxmann.com 334*** wherein on

24.07.2009, a search was conducted and notice under Section 148 was issued to the appellant . In response to this notice, the assessee filed its return. However, the assessee did not produce supporting vouchers for expenses, details of purchases and stocks and copies of partners' bank accounts and the Assessing Officer could not verify various details. The Assessing Officer thus adopted net rate of 10 per cent on gross receipts on estimate basis which was reduced by the Tribunal to 9 per cent. The appellant filed appeal and the same was dismissed. In para No. 5 and 6, it has been observed as under:-

> *5. A perusal of the impugned order passed by the Tribunal shows that after considering the overall facts and circumstances of the case, the Tribunal had estimated the rate of profit at 9%. It is true that the discretion to determine a net profit rate must necessarily be exercised on the basis of relevant factors. In the present case, it has been categorically recorded by the Tribunal that the assessee did not produce any supporting vouchers for expenses exceeding Rs. 25,000/-. It did not file copies of the bank accounts of the partners and thus the Assessing Officer could not have verified the various payments received by the appellant from bankers or payments taken directly from the customers by the partners. The assessee did not file the details of purchases in the format given by the Assessing Officer. Regarding sundry debtors, no confirmation was filed and even in the balance sheet, the names of the sundry debtors to the extent of Rs.1,66,00,000/- were not shown. No details of opening and closing stock were filed. In view of these facts, the Assessing officer could not verify various details and in this way he could not rely upon the book version of the assessee. The assessee even did not file return unless the same was detected during the search. Keeping all the factors in view, the Assessing Officer adopted net rate of 10% on the gross receipts on estimate basis which was reduced by the Tribunal to 9% to meet the ends of justice. The relevant findings recorded by the Tribunal in paras 11 to 16 read thus:-*
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>> *"11.We have considered the rival submissions carefully. Before us the issue of rejection of books was not seriously pressed but it is clear from the material available on record that assessee is a firm and was having two permanent account numbers. It was admitted before us that there was a firm with the same name but the partners were different and the firm was again started with the same name with different partners. Since this issue is not before us we are not going into the details. Further, it is also admitted fact that assessee did not file any return despite having*

taxable income. This fact becomes clear because assessee has itself filed the return declaring income of Rs. 3,19,865/- in response to notice under section 148. We have already discussed the affairs of the assessee and failure to file many details while discussing the facts of the case at the outset of this order. To summarize the details again, the assessee did not produce any supporting vouchers for expenses exceeding Rs.25,000/-. The assessee did not file copies of the bank account of the partners and, therefore, the Assessing Officer could not have verified the various payments received by the firm from bankers or payment taken directly from the customer by the partners. The assessee has shown wages payable of Rs. 9,38,500/- which were paid on 5.7.2007 and normally labour will not work for period of three months without receiving their payments. The assessee also did not file the details of purchases in the format given by the Assessing Officer. The assessee was having sundry creditors of Rs. 75,69,505/- and did not file any confirmation even in cases where sundry creditors exceed Rs. 1 lakh. Even regarding sundry debtors no confirmation was filed and as noted by the Assessing Officer even in the balance sheet the names of the sundry debtors to the extent of Rs. 1,66,00,000/- were not shown. No details of opening and closing stock were filed. The Assessing Officer has discussed and summarized this issue at page 5 in the following para:-

> *"From the above discussion, it is clear that purchases made by the assessee are not subject to any verification. Sundry creditors and debtors are also not subject to any verification. Wages, salaries, general expense and other expenses mentioned in para 15 of my letter dated 21.1.2013 are also not subject to any verification. In view of the above facts, the book version shown by the assessee cannot be relied upon. I therefore, apply net profit rate of 10% on the gross receipts of Rs. 5,42,83,935/- which will mean that assessee's income would work out at Rs. 54,28,393/-.From this interest paid to partners at Rs. 6,28,455/- is to be deducted and the balance would be income of the assessee at Rs. 47,99,938/-."*

12. The above clearly shows that since Assessing Officer could not verify various details i.e. why he has estimated the profits. This clearly shows that books have been rejected.

13. Now the question is once books of account are rejected, what rate of profit should be applied. We agree with the contention of learned counsel that profit should be estimated on the basis of various facts a *particular case. Even the Hon'ble Punjab and Haryana High Court in the case cited by learned counsel in the case of Telelinks vs. CIT(supra) has observed that while discussing the nature of power to be exercised for determining the net profit, it was observed as under:-*

> *"The first question relates to the nature of the power exercised while determining a net profit rate. The question must necessarily be answered by holding that where books of account rejected or not produced, the Assessing Officer would be well within the limits of his jurisdiction to access income by applying a fictional net profit rate. The power so conferred is quasi judicial and, therefore, not unbridled as it must be guided by reason and though it may involve a degree of guesswork, must be based upon a rational analysis of facts. The first question of law is answered accordingly".*

14. While discussing the second question, factors required to be taken into consideration for determination of the net profit rates, it was observed as under:-

> *"The second question of law namely factors required to be taken into consideration while applying a net profit rate has come up for consideration, as on the same set of facts the Assessing Officer, the Commissioner of Income Tax and Income Tax appellate Tribunal have applied different rates of net profit, the discretion to determine on adequate net profit rate undoubtedly vests with authorities under the Act by the discretion so vested is neither unbridled nor unguided as it must be guided by reason i.e. should be preceded by reasons which, in turn, should be preceded by a perceptible process of reasoning based upon due consideration of all relevant facts. However, authorities under the Act appear to construe their jurisdiction as a discretion to apply a thump rule dependent almost entirely on the whims of a particular officer.*
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> *The discretion to determine a net profit rate must necessarily be exercised on the basis of relevant factors which we shall enumerate but before doing so, would clarify that these factors are neither exhaustive nor a final word on relevant factors that may be considered while determining the net profit rate. A few significant factors are the past tax history of the assessee, if available, assessment order that may have been passed and accepted by the department, the nature of the assessee's*

business, an appraisal of the value of the contract, prevailing economic conditions vis a vis the assessee's business, the price of raw material, labour etc. the rice in price index as notified by the Central Government from time to time if applicable and if the Assessing Officer proceeds to rely upon assessments of other assessees engaged in similar business to do so only after determining points of similarity etc."

15. Therefore, once details are not filed, the profit has to be estimated and such estimation would have to be done considering the facts of the particular case in a judicious manner. In the case of CIT vs. Prabhat Kumar (supra) where addition was made on account of wages, which was not found to be verifiable, ultimately the court applied profit rate of 12% and it was observed as under:-

"The Tribunal has proceeded on the basis that there may be unverifiable wages which may call for addition to income but not to the extent assessed by the Commissioner of Income Tax (Appeals). Applying net profit rate on the basis of best judgment assessment in a given situation will be a question of fact unless such an assessment is shown to be arbitrary or perverse. In the present case, it cannot be said that any substantial question of law arises. Assessment of 12 per cent of net profit rate of contract receipt is not shown to be arbitrary or perverse.

Thus, wherein in a case wages were found not verifiable 12% profit reached was held to be reasonable.

16. Now in the case before us we have already noted that assessee did not file even the return unless the same was detected during search made in the case of M/s Talwar Group. Anyway the most relevant factor in the case before us was that assessee is engaged in the business of construction of house for private parties. It is a common knowledge that rate of profit in construction of a private houses is much higher than in comparison to the mass construction contracts for government or other government authorities. This is so because the construction of a private house involves superior quality of work, fancy items for which generally the contractor charges higher rate of margin. Further, it is to be noted that assessee had huge amount of sundry creditors amounting to Rs. 75,69,505/- for which no confirmation has been filed. Even the names of the sundry debtors are not disclosed in the balance sheet. Normally, the Chandigarh Bench of the Tribunal has estimated the rate of profit in the case of construction firms at 8%. But considering the above facts, we are *of the opinion that estimate of profit at the rate of 9% would meet the ends of justice in this case and therefore, we set aside the order of learned CIT(A) and estimate the net profit at 9%."*

6. The estimation of gross profit rate at 9% could not be held to be arbitrary or unreasonable warranting interference by this Court in the facts and circumstances of the case. The view adopted by the Tribunal is a plausible view and we find no error therein. The judgments cited by the learned counsel for the appellant assessee in ITA No.269 of 2014, decided on 20.11.2014 (Telelinks vs. Commissioner of Income Tax, Bathinda), ITA No.428 of 2014 (Jangir Singh Mahli vs. Commissioner Central Tax, Patiala, decided on 6.5.2015, Aggarwal Engineering Co. vs. Assistant Commissioner of Income Tax, (2011) 336 ITR 332 (P&H) and M/s Deluxe Roadlines Pvt. Limited vs. the Deputy Commissioner of Income Tax, ITA No.213 of 2014 decided on 14.10.2014 (Bangalore) being based on individual fact situation involved therein do not come to the rescue of the appellant. Consequently, no substantial question of law arises. The appeal stands dismissed."

Heard learned counsel for the parties at length.

The above case of ***S.P. Construction (supra)*** is directly applicable to the facts of the present case, as in the present case as well, the assessee did not maintain the stock register quality wise. Thus, quantity of different quality of rice produced from milling of paddy could not be ascertained. No evidence has been given by the assessee to substantiate its submissions. Reference can now be made to Section 145 of the Income Tax Act which reads as under:-

'145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have

not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.'.

As per above Section, the income has to be computed in accordance with the method of accountancy followed by an assessee i.e cash or mercantile. Such method has to be followed keeping in view the accounting standard notified by the Central Government from time to time. In the absence of qualitative details, it is quite difficult to examine the sales of the assessee. The higher quality of a rice can be shown as sold at a lower rate in the bills. There was flaw in the maintenance of the details. Thus, the addition of Rs.2,00,000/- on account of sale of rice has rightly been made.

Thus, order dated 28.03.2013 (A-3) passed by Income Tax Appellate Tribunal, Chandigarh Bench 'E' does not require any interference by this Court.

The appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.03.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No