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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

208/2

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ITA Nos.341 and 297 of 2018 (O & M)
Date of Decision: 24.01.2024

Baljinder Singh Salana

.....Appellant(s)

Versus

Commissioner of Income Tax, Patiala

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Ms. Ginnijeet Malhotra, Advocate,
for Mr. Ferry Sofat, Advocate,
for the appellant.

Mr. Saurabh Kapoor, Sr. Standing Counsel,
and Mr. Vaibhav Gupta, Jr. Standing Counsel,
for the respondent(s).

G.S.SANDHAWALIA, J.

1. The present order shall dispose of ITA-341-2018 filed by the assessee which is directed against the order dated 01.09.2015 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh Bench bearing ITA No. 1058/Chd./2014 for the assessment year 2009-10 (Annexure A-3). The second appeal bearing ITA-297-2018 is directed against the dismissal of the miscellaneous application i.e. M.A. No.10/Chd/2016 filed in the said case on 08.04.2016 (Annexure A-8). The following substantial questions of law are sought to be raised by the assessee:-

(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in rejecting the books of the accounts of the appellant?

(ii) Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in law in upholding the

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disallowance of expenses on account of wages paid to labour and without any material on record against the assessee?

(iii) Whether the ITAT has erred in applying the provision of section-44AD for calculating the net profit ratio at 8% of the gross receipt which was treated as income of the assessee?

(iv) Whether net profit ratio of earlier years is relevant in calculating the net profit ratio of subsequent year when the books of account is rejected?

(v) Whether M.A. filed by the appellant dismissed by the ITAT is wrong illegal and an order is liable to be set aside?

2. The Tribunal, vide the order which is now impugned, in principle had upheld the concurrent findings recorded by the Assessing Officer and duly upheld by the Commissioner of Income Tax (Appeals) wherein, the gross profit @ 8% per annum was applied after giving reasons for rejecting the books of accounts. The Tribunal noticed that the assessee had not been able to furnish the material as asked for by the Assessing Officer and had not been able to substantiate the labour payments. The findings of the Labour Court having not been rebutted at any stage even before the Tribunal and in the absence of any corroborative evidence, the said orders have been upheld. It was noticed that there was a huge variation of gross profit from 1.74% to 35.89% and in such circumstances, the appeal was rejected. Resultantly, rectification application which was sought before the Tribunal by filing MA/10/Chd/2016 to the extent that the table as such which had been relied upon from the Assessing Officer's order was a wrong figure of gross profit of 35.89% which did not find favour with the Tribunal and the same was also dismissed.

3. A perusal of the paper book would go on to show that the return

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had been filed by the assessee for the assessment year 2009-10 on 30.09.2009 and an income had been declared to the tune of Rs.16,67,420/- by the assessee, who was a government contractor and following the mercantile basis of accounting. The case had been selected for scrutiny through CASS and necessary notices under Sections 143(2) dated 23.08.2010 and under Section 142 dated 23.05.2011 had been issued. The representatives had attended the proceedings and filed the tax audit report. It was noticed that the assessee was carrying on the business of government contracting in respect of roads and the total contract receipts were to the tune of Rs.3,33,44,241/-. Various expenses had been claimed on purchase of *bajri*, bitumen, stone and labour and the assessee had claimed further expenses in the profit and loss account and the income declared in percentage terms viz-a-viz the receipts was approximately 5%.

4. The details of the organization for which the work was carried out and the names and addresses of persons and other details from whom purchases were effected, details of machine repair bills, basis of valuation of closing stock and whether any site wise details or books were being maintained was asked for and a finding was recorded that the books were not maintained on a regular basis and the assessee had shown purchase of substantial material but no para wise details have been furnished by the assessee. The labour scroll registers contained the names of persons who were employed as labourers but no address or other identification details were furnished in the monthly labour scrolls. Lack of consistency in the payment of wages and the members employed and a gross variation between the employment and the wages paid was analyzed by the Assessing Officer. The labour scrolls showed thumb impressions and no addresses and there was no consistency as new labour was engaged and there

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was no site wise or contract wise details.

5. In such circumstances, the book of accounts of the assessee was rejected and fall back was done on Section 145(3) of the Income Tax Act, 1961 (in short 'the Act') for estimating the income of the assessee and support of Section 44AD had to be taken to fix the percentage at 8% of the receipts to be treated as income under the heads of "profit and gains of business". Resultantly, income was treated at Rs.26,67,540/- i.e. @ 8% of Rs.3,33,44,241/-. Other additions were also made, with which we are not concerned, since benefits were given by the Commissioner also in appeal. The Commissioner noticed these facts and has rejected the appeal which, as noticed, was upheld by the Tribunal. The resultant effect is that the argument raised that it was based on the fact that there was an estimation done on the basis of the variation for the earlier years by the Assessing Officer from the period 2006 to 2010 and had been prejudiced since the table showed the variation of 35.89% for the year 2008-09 is not sustainable from the order passed by the Assessing Officer, who has given the reasoning on different accounts, as noticed above, for rejecting the books of accounts.

6. In such circumstances, we are of the considered opinion that the order as such of the Assessing Officer was well justified and had taken into account all material particulars and no substantial question of law as such arises which the appellant is trying to put forth.

7. In the second appeal i.e. ITA-297-2018, in our considered opinion, the same not maintainable against the order of rectification dated 08.04.2016.

This Court in ***Commissioner of Income Tax vs. Saroop Tanneries Ltd., (2015)***

374 ITR 20 (P&H) held that the appeal is not maintainable under Section 260A

of the Act against an order passed by the Tribunal under Section 254(2) while

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placing reliance upon the judgment in *ITA No. 73 of 2003, Rani Paliwal vs. Commissioner of Income Tax, 2004 (190) CurTR 566*. The Full Bench of the High Court of Delhi in *ITA No.724 of 2010, Lachman Das Bhatia and Sons vs. Commissioner of Income Tax, 2007 (36) RCR (Civil) 670* also considered the maintainability of an appeal against an order passed under Section 254(2) of the Act wherein, it was held that if the main order is amended, both the main order as well as the amended order would be amenable to appeal and that if the appeal is not maintainable, the order can be challenged by way of filing a writ petition under Articles 226 and 227 of the Constitution of India. Similar view has also been taken by the High Court of Gujarat in *Saroj Ceremics Industries vs. Income Tax Officer, (2014) 42 Taxmann.com 372 (Gujarat)*. The Orissa High Court in *ITA No. 64 of 2022, Principal Commissioner of Income Tax-1, Bhubaneswar vs. Sekhar Kumar Mohapatra* also held to the same effect while placing reliance upon *Saroop Tanneries Ltd.'s case (supra)*.

8. In such circumstances, we are of the considered opinion that ITA-297-2018 is not maintainable in view of the fact that it is directed against the order of rectification dated 08.04.2016.

9. Resultantly, in the absence of any question of law arising for consideration in the two appeals, the same stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

24.01.2024
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(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No