IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2024:PHHC:001367-DB

(115) **ITA-29-2023**
Decided on : 08.01.2024

Pr. Commissioner of Income Tax-1, Chandigarh

……Appellant

Versus

M/s N.H. Construction Private Limited, Panchkula

……Respondent

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

Present: Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel for the appellant.

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G.S. Sandhawalia, J. (Oral)

The present appeal filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') is directed against the order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal') passed in ITA No.164/CHD/2020 dated 13.07.2022 for the assessment year 2016-2017.

2. The following substantial questions of law are sought to be raised by the appellant-revenue:-

> " (i)Whether on the facts and circumstances of the case, the order passed by the Ld. Income Tax Appellate Tribunal is perverse in reducing the net profit and deleting the addition made on account of Trade Payables' when the assessee totally failed in producing the requisite details, documents and evidence before the AO as well as before the appellate authorities?
>
> (ii) Whether, by the absence of complete and undistorted examination and appreciation of the evidence available on record and the resultant denial of any credible investigations in to the inconsistencies demonstrably evident in the same, caused by the precipitate and prematurely conclusive decision arrived at by the ITAT, and against the backdrop of

the various applicable judicial pronouncements in the case of the Hon'ble Courts including the Apex Court that have been consolidated by the Hon'ble Allahabad High Court (Lucknow Bench) in the case titled as Arvind Kumar Chaudhary Vs. Commissioner of Income Tax, bearing ITA No. 5 of 2015, decided on 16.01.2017, there has not been miscarriage of justice?

(iii) Whether on the facts and in law the Ld. Income Tax Appellate Tribunal was right in reducing the net profit rates of 10% applied by the Assessing Officer when the assessee has failed to produce necessary evidences not only before the Assessing Officer but also before the appellate authorities?

(iv) Whether on the facts and in law, the Ld. Income Tax Appellate Tribunal was right in sustaining the deletion of addition of Rs.6,50,35,836/- on account of failure of the assessee to submit any evidence to prove the genuineness of 'Trade Payables' and abnormal increase therein not only before the AO but also before the appellate authorities?

(v) Whether on the facts and in the circumstances of the case, the Ld. Income Tax Appellate Tribunal misdirected itself in misconstruing the provisions of the Income Tax Act, 1961 resulting into delivering a perverse order contrary to the scheme of the statute and material on record?

3. In sum and substance the appellant is aggrieved against the order of the Tribunal which has upheld the order of the Commissioner of Income Tax (hereinafter referred to as 'the Commissioner') dated 13.12.2019 (Annexure A-2). The Appellate Authority had come to the conclusion that the net profit @ 10% of the gross receipts which was done by the Assessment Officer for the assessment year 2016-2017 was not justified and the addition at ₹3,85,48,274/- was accordingly not sustained and it was reduced to 6% on the comparable cases engaged in similar business where contract receipts were inclusive of material and the Assessment Officer was directed to compute the net profit of the assessee by applying the rate of 6%.

4. The Tribunal had noticed that the past history of the assessee had been accepted and had attained finality and comparable data in the case of other assessees involved in similar line of business would not provide a reasonable basis. The Assessment Officer had not considered the past history or the comparable data of other assessees involved in similar line of business and Commissioner had considered the past history of the assessee and, therefore, the order passed by the Commissioner was confirmed.

5. We have also perused the order of the Commissioner which would go on to show that from the preceding years 2012-2013 till 2014-2015 and for subsequent years 2017-2018 and 2018-2019 the net profit rate was considered while coming to the conclusion that 6% would be appropriate. The chart as such relied upon by the Commissioner reads as under:-

AY	Net Sale	Net Profit	NP Rate	Additions u/s 143(3)	Net Profit after additions	NP Rate after additions
2012-13	35,89,26,010	77,34,831	2.15	24,82,008	1,02,16,839	2.8
2013-14	24,59,96,273	74,46,628	3.03	-	-	-
2014-15	35,01,89,112	1,21,51,180	3.47	61,28,044	1,82,79,224	5.2
2015-16	42,98,43,102	1,63,74,498	3.81	-	-	-
2016-17	56,39,86,237	1,78,50,349	3.17	-	-	-
2017-18	1,06,49,15,569	3,77,06,153	3.54	-	-	-
2018-19	1,07,71,97,227	3,81,22,014	3.54	-	-	-

6. In such circumstances, we are of the considered opinion that the Tribunal is well justified in accepting the findings of the Commissioner, which are based on the material available on record and keeping in view the net profit of the assessee for the earlier and subsequent years, which are far below 6%. Therefore, no fault can be found in the

procedure adopted by the Commissioner, who has applied higher rate than earlier applied which has been duly upheld by the Tribunal.

7. Regarding the second issue, the record would go on to show that the petitioner had filed the return of income on 28.03.2017 by declaring an income of ₹2,09,33,660/-. The case had been selected for compulsory scrutiny and notice under Section 143(2) of the Act had been issued on 21.09.2017 and duly served and it was on that basis the Assessment Officer had added ₹6,50,35,836/- on account of increase in trade payables. Keeping in view the fact that for the financial year 2014-2015 the amount was merely ₹57,74,488/- the addition had been made under Section 68 of the Act by coming to the conclusion that there were reasons to believe that the assessee had furnished inaccurate particulars of income and, therefore, the Assessment Officer had initiated penalty proceedings under Section 271(1)(c) of the Act. The said order had been rightly set aside by the Commissioner by holding that these payables are not cash credits falling within the purview of Section 68 of the Act and rather these are directly linked with the purchases of the assessee and as per settled law sundry trade creditors could not be disallowed once the flat net profit rate was applied. The judgment passed by this Court in the case of **Commissioner of Income Tax Vs. Dulla Ram, Labour Contractor (2014) 42 Taxmann. Com 349** was applied to delete the additions made under Section 68 of the Act.

8. The provisions of Section 68 read as under:-

> "**68. Cash credits**.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfatory, the sum so

credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

9. It is in such circumstances, the Tribunal has also upheld the said order by noticing that the increase in trade payable is directly linked to purchase and consumption of raw material and, therefore, no further disallowance can be made towards the trade payable. Therefore, we do not find any justifiable basis to disturb the findings of the Commissioner in the absence of any contrary material brought on record.

10. We are of the view that the Tribunal was well justified to hold that the respondent is a construction company and therefore, in a particular year, if there has been more consumption of raw material, it would not entail tax on the same as there was no concealment of any income. The Assessment Officer was not justified in making the addition under Section 68 of the Act in the facts and circumstances. Resultantly, we are of the considered opinion that no substantial question of law arises in the present

appeal as the Tribunal has rightly upheld the well reasoned order passed by the Commissioner and the present appeal is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

08.01.2024
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No