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Court : Kerala

Decided On : Feb-12-2002

Reported in : (2002)174CTR(Ker)351

Appeal No. : IT Ref. Nos. 162 & 163 of 1998 12 February 2002 A.Y. 1979-80 & 1980-81

Appellant : Mani and Co.

Respondent : Cit

Advocate for Pet/Ap. : K.M. V. Pandalai, *for the Assessee* P.K.R. Menon, *for the Revenue*

Judgement :

K.K. Denesan, J.

The Tribunal disposed of five appeals viz., ITA 839 & 840/Coch/1984, filed by the assessee for the assessment years 1979-80 and 1980-81 and ITA Nos. 14, 15 & 16/Coch/1985 filed by the department for the same period, by a common order. The assessee is a firm of building contractors with the military engineering service. It had executed in part during the year ending 31-3-1979, seven items of work for the MED in Cochin, Sri Harikkotta at Trivandrum and Goa. According to the assessee daily statements of the receipts and expenses at each of the sites with all available vouchers were sent to the officer of the firm and from these

statements and vouchers a cash book and ledger for each item of work was written up. A consolidated P&L; a/c as well as the balance sheet was drawn up from these books and filed with the return of income together with the necessary schedules. Subsequently the assessee produced these statements and books before the Income Tax Officer. After examining the records, the Income Tax Officer found that the books are written at a stretch and no contemporary evidence was produced to substantiate the genuineness of the books. The assessee could not produce the original entry. The assessing authority while rejecting the book results and the contention of the assessee that it suffered a loss, estimated the net profit at 10 per cent of the gross profits.

2. The assessee filed appeal before the Commissioner (Appeals). This appeal was disposed of in the following terms :

'Considering the picture of the assessee's conduct of business, the performance of which was contracted a few years prior to the relevant period, the assessee's plea that it did not make any profit and had actually incurred a loss cannot be brushed aside as irrelevant. May be, the books of account produced by the assessee were not ideally written. That does not, however, mean that the assessee should have made a profit even when it had incurred a loss as per the accounts. A mechanical estimate of income at a fixed percentage irrespective of the peculiar characteristics of the business does not do justice to the accounts or to the assessee. Keeping in mind the cost increase without a corresponding rate increase I am inclined to accept that the assessee could not have made any profit from his contract business carried out during the period relevant to the assessment years 1979-80 and 1980-81. At the same, I am also not prepared to accept the assessee's books wherein it has been recorded that the assessee has incurred a substantial loss in these two years. Striking a just and fair balance, I would hold that the assessee had neither made any profit nor incurred any loss in respect of the contract business carried out during the period relevant to the assessment years 1979-80 and 1980-81. In this view of the matter, the business results for the two years under appeal will be taken as Nil.'

3. The assessee and the department filed second appeals before the Tribunal. The Tribunal by its order dated 31-7-1989, allowed the department's appeal and dismissed the assessee's appeal.

4. IT Ref. Nos. 162 and 163/1998, are before us at the instance of the assessee. The question referred for our consideration is the following :

'Whether, on the facts and in the circumstances of the case, Tribunal was justified in holding the estimate of the profits despite the assessee maintaining accounts for his business ?'

5. Shri K.M.V. Pandalai, learned counsel appearing for the assessee contended that the Tribunal has seriously erred in upholding the estimate of the profits arrived at by the Income Tax Officer despite the assessee maintaining the accounts of his business. Drawing sustenance from the reasons given by the Commissioner (Appeals) the learned counsel submits that the assessee's books of accounts were original books and those books were produced before the Income Tax Officer and, therefore, there was no justification to reject the book results. According to him, the Income Tax Officer went wrong in assuming that the books of accounts did not represent the correct facts and, therefore, his estimate is liable to be rejected.

6. We notice that the Income Tax Officer examined the books of accounts maintained and produced before him by the assessee and found that the accounts suffered from certain defects. The major defect was that the books of original entry were not produced. The expenses were also not properly vouched. We are of the view that the revision petitioner is not well founded in his submission that he had maintained proper accounts for the relevant period.

7. We have examined one other contention of the petitioner that it suffered loss during the relevant years. Petitioner had been showing negligible amounts of profit in the earlier years which were not acceptable to the department and the matter was taken before the Settlement Commission. It is not disputed by the petitioner that the Settlement Commission adopted that profit rate of more than 10 per cent. It is true that the Commissioner (Appeals) recorded certain findings in favour of the petitioner accepting the plea that it did not make any profit. In his opinion the case

of the assessee that it incurred loss cannot be brushed aside as irrelevant. Having regard to the delay in completing the work, the appellate authority found that cost increase without corresponding rate increase indicated that the assessee did not earn any profit for the assessment years 1979-80 and 1980-81. We are unable to agree with the reasoning of the Commissioner (Appeals) inasmuch as he has omitted to take into account certain relevant aspects before coming to that conclusion. If there was delay on the part of the government in handing over to the assessee the site for construction or in providing materials, the assessee would certainly be in a position to ask for higher amounts. It was for the assessee the contractor to adduce necessary materials to show that it was not entitled for rate increase corresponding to cost escalation consequent on the delay in completing the work. But it did not discharge that burden. We do not find any error in the view taken by the Tribunal that the order passed by the Commissioner (Appeals) was liable to be reversed. It, therefore, follows that the Tribunal is justified in upholding the estimate of the profits rejecting the accounts maintained by the assessee for his business.

8. In the result, the question raised for our consideration is answered against the assessee and in favour of the revenue income-tax references are accordingly dismissed.