

Cit Vs. Jain Construction Co.

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Court : Rajasthan

Decided On : Mar-15-2000

Reported in : [2001]116TAXMAN129(Raj)

Appeal No. : D.B. IT Reference Application No. 106 of 1999 15 March 2000

Appellant : Cit

Respondent : Jain Construction Co.

Advocate for Pet/Ap. : Sandeep Bhandawat, *for the Revenue* Ajay Kothari, *for the Assessee*

Judgement :

ORDER

This is an application under section 256 of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the Commissioner requiring this court to direct the Tribunal to submit statement of case and refer following questions of law said to be arising out of order passed by the Tribunal in Income Tax Reference Application No. 894 (Jp) of 1996 relating to the assessment year 1993-94. Inasmuch as in our opinion, the aforesaid questions have become of academic importance, and the Tribunal was justified in refusing to grant application for making the such reference under section 256(1).

2. The Income Tax Officer in the first instance by order dated 31-1-1999 has assessed the income of the assessee by applying net profit rate with specific

stipulation that this is subject to depreciation, interest paid to third parties, and remuneration paid to partners. The net profit rate applied subject to expense on these three accounts to be adjusted was 12.5 per cent. From the amount so determined the interest paid, depreciation and remuneration to partners were deducted for the purpose of arriving at net taxable income. Aggrieved with the order, the assessee has appealed before the Deputy Commissioner (Appeals). While the assessee's appeal was pending, the Commissioner considering the order of the Income Tax Officer to be prejudicial to the interest of the revenue acted under section 263 of the Act and revised the assessment by excluding the deductions made on account of interest, depreciation and remuneration to partners. Against the order of the Commissioner under section 263, the assessee preferred an appeal before the Tribunal. The said appeal of the assessee was allowed by the Tribunal by holding that in the aforesaid circumstances after applying the net profit rate the deductions were permissible. Against the order of the Tribunal allowing the appeal of the assessee in respect of order under section 263 passed by the Commissioner, the revenue filed an appeal under section 256(1) for making a reference of the aforesaid questions of law said to be arising out of its order. That application was rejected by the Tribunal holding that no question of law arises. Thereafter the revenue filed an application under section 256(2). D.B. Income Tax Reference case No. 12 of 1998 before this court for raising the same questions as are sought to be raised in the present case.

3. It has been stated that the said application under section 256(2) has since been rejected by a Division Bench of this court on 24-9-1999.

4. While these proceedings concluded, in respect of the very same assessment year and the very same assessment order, in appeal which was pending before the Deputy Commissioner (Appeals), a notice for enhancement of assessment was issued to the assessee to the same effect for which the Commissioner had exercised his power under section 263 and the assessment was enhanced by four lakhs by disallowing the deduction on account of depreciation and interest to third parties, after reducing the gross profit rate from 12.5 per cent to 8 per cent. The order of the Deputy Commissioner (Appeals) has been reversed by the Tribunal in appeal out of which this reference application has arisen. Inasmuch as the

questions relating to assessment raised in this application are for the same period for which the proceedings have become final as a result of proceedings initiated by the Commissioner under section 263 and this court has declined to invite reference on the very same question for the very same period, we are of the opinion that assessments having become final for the very same assessment period by the Tribunal and ultimate rejection of application by this court, it cannot be reopened in these proceedings. Even otherwise the question only appears to be adoption of one or other method of computing net taxable profit on estimate. While the Income Tax Officer and the Tribunal have adopted higher rate of profit by excluding the consideration of depreciation to be adjusted and interests payable the Deputy Commissioner (Appeals) have adopted lower rate of profit by including the adjustments on these account. This does not give rise to any question of law.

5. In the circumstances, this application is rejected.

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