

ito Vs. Amar Singh Krishanchander

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SooperKanoon Citation : sooperkanoon.com/772089

Court : Rajasthan

Decided On : Jan-16-2001

Reported in : (2001)71TTJ(NULL)182

Appeal No. : ITA Nos. 1482/Jp of 1995 16 January 2001 A.Y. 1992-93

Appellant : ito

Respondent : Amar Singh Krishanchander

Advocate for Pet/Ap. : G.R. Meghwal, *for the Revenue Suresh Ojha, for the Assessee*

Judgement :

ORDER

S.R. Chauhan, J.M.

This appeal by revenue for assessment year 1992-93 is directed against the order of Commissioner (Appeals), Rajasthan-III, Jaipur, dated 24-4-1995.

2. We have heard the arguments of both the sides and also perused the records.
3. Ground No. 1 disputes the learned Commissioner (Appeals)s direction to assessing officer to allow depreciation and interest to third parties out of income computed by applying net profit rate of 10 per cent. The learned Departmental Representative of revenue has contended that in fact they have challenged the

reduction in net profit rate by Commissioner (Appeals) from 11 per cent to 10 per cent and that the rest of the matter they are not challenging. He has contended that he relies on the Jaipur Tribunal's decision wherein net profit rate of 12.5 per cent has been applied and so 11 per cent was reasonable. As against this, the learned authorised representative of assessee has contended that the learned Commissioner (Appeals) has held the net profit rate of 10 per cent as reasonable subject to depreciation and interest. He has contended that in the ground raised by the department, the department is not aggrieved by the rate but only aggrieved against allowing of interest and depreciation and that no issue has been raised in the ground with respect to the reasonableness of rate of profit. He has also referred to assessee's letter dated 6-10-1992, quoted in the assessing officer's letter on p. 2. He has also raised objection to the learned Departmental Representative's arguments on reasonableness of rate of profit for the reason that the same was not contained in the ground raised by the department before the Tribunal. He has also contended that so far as the merits of the learned Departmental Representative's contentions are concerned, even less net profit rate was considered reasonable by the learned Commissioner (Appeals) and Jaipur Bench of Tribunal in several cases, and that the issue of rate of N.P. was not involved in the case of CIT v. Jain Construction Co. & Ors. .

4. We have considered the rival contentions as also the materials placed on record. On careful reading of ground No. 1 raised by the department, we do not find ourselves convinced with the contention of the learned Departmental Representative of revenue that in fact it is the rate of profit with which the department is aggrieved and is disputing in the ground. From a plain reading of ground No. 1 as framed/raised by the department, it will be revealed without ambiguity that the challenge being given in the ground is to the allowance of depreciation and interest to third parties and not to the reasonableness of the net profit rate. Since the depreciation and interest to third parties have been held by the Hon'ble jurisdictional High Court to be further separately allowable after determining the net profit, in the case of M/s Jain Construction Co. (supra), we find no fault with the impugned order of learned Commissioner (Appeals) on this count. We, therefore, decline to interfere with the same.

5. Ground No. 2 disputes the learned Commissioner (Appeals)s direction to assessing officer to charge interest on receipt basis in respect of fixed deposits. The learned Departmental Representative of revenue has contended that the charging of interest on FDRs should be on accrual basis as the assessee is following mercantile accounting system. He has also contended that the difficulty arises before the department in charging interest otherwise for the reason that on maturity of the FDRs the assessee again makes deposit of the principle amount together with the interest thereon for another contract/period and does not disclose to the department As against this, the learned authorised representative of the assessee has supported the impugned order of learned Commissioner (Appeals) and contended that the learned Commissioner (Appeals) has followed the decision of the Tribunal.

6. We have considered the rival contentions and the relevant material on record. From the perusal of record, we find that the learned Commissioner (Appeals) has followed the decision of Tribunal in the case of M/s. Tola Ram Phusha Ram for assessment year 1988-89 in directing to charge the interest on FDR on actual receipt basis. We also find that in assessee's letter to Commissioner (Appeals), dated 19-4-1995, placed on pp. 3 to 5 of assessee's paper book it is mentioned on p. 3 that the assessee is crediting the interest as and when received by the bank. As such, in view of the aforesaid decision of the Tribunal, and considering that when the assessee is following the method of crediting the interest as and when received by the bank and thus on actual receipt basis so the charging of interest on accrual basis cannot be treated as justified. The learned Commissioner (Appeals)s impugned order in issuing the assailed direction to assessing officer is found to be quite proper and justified and we, therefore, make no interference therewith.

7. In the result, this appeal of the revenue is dismissed.