ito Vs. New Mitharwal Construction Co.

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Court : Rajasthan

Decided On : May-28-2001

Reported in : (2001)72TTJ(NULL)533

Appeal No. : Misc. Appln. No. 4/Jd/2001 28 May 2001 A.Y. 1993-94

Appellant : ito

Respondent : New Mitharwal Construction Co.

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

Judgement :
ORDER

P.M. Jagtap, A.M.

This miscellaneous application is filed by the revenue seeking rectification of order passed by this Bench in ITA No. 2120/Jp/95 on 25-8-2000.

2. The learned Departmental Representative submitted before us that the Tribunal vide its aforesaid order dated 25-2-2000, has directed further deduction on account of depreciation, interest to third parties and interest paid to partners from the income computed by applying net profit rate. However, when the effects are given to the said order of the Tribunal, the total assessed income of the assessee comes to a loss of Rs. 2,66,678 as against a positive income of Rs. 2,10,110

returned by the assessee. He, therefore, contended that as the assessed income cannot be reduced to a figure lower than the returned income there is an apparent mistake from record in the aforesaid order of the Tribunal and urged that the same may be rectified under section 254(2).

3. The learned counsel for the assessee on the other hand strongly opposed this miscellaneous application filed by the revenue stating that the department has not specifically pointed out any mistake in the order of the Tribunal. He also contended that the assessing officer is sufficiently empowered to restrict the assessed income after giving effects to the orders of the appellate authorities to the returned income if the same . falls below the returned income and in such circumstances there was no need for the department to file this miscellaneous application to waste the valuable time of the Tribunal. He, however, frankly and fairly submitted that the assessee has no-objection if the assessed income for the year under consideration is restricted to the income returned by the assessee.

4. We have considered the rival submissions and also perused the relevant material on record. It is observed that in many cases of contractors, where the deductions on account of depreciation, interest to third parties and salary and interest to partners are allowed separately from the income estimated by assessing officer by applying net profit rate following the decision of Honble Rajasthan High Court in the case of CIT v. Jain Construction Co. , the resultant income has fallen below the income returned by the assessee. In such cases, the Tribunal has invariably given a specific direction to the assessing officer in its orders to the effect that the assessed income be restricted to the returned income. In the present case, however, such direction has not been specifically given in the order dated 25-8-2000 in ITA No. 2120/Jp/95 (reported as New Mitharwal Construction Co. v. Asstt. (2001) 72 TTJ (Jod) 531) and to that extent there is a mistake in the said order of the Tribunal which is apparent from record. In our opinion, this mistake, being patent and self evident, may be rectified under section 254(2) in order to properly give necessary consequential effects to the aforesaid order of the Tribunal. In the case of ITO v. M.K. Mohammed Kunhi (1969) 71 ITR 815 , the Honble Supreme Court has held that it is a firmly established rule that an express grant of statutory power carries with it by necessary implication the

authority to use all reasonable means to make such grant effective.

5. We, therefore, modify our aforesaid order to the effect that the following part be inserted as para No. 8A after para No. 8 and before para No. 9 of the said order.

'8A. 'Before we part with this order, we may specify, for the sake of clarity, that if the assessed income falls below the returned income after giving effects to this order, the assessing officer is directed to restrict the same to the income returned by the assessee'.

6. In the result, this miscellaneous application of the revenue is allowed as indicated above.