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Court : Rajasthan

Decided On : Sep-13-2001

Reported in : (2002)172CTR(Raj)408

Appeal No. : Civil IT Ref. No. 55 of 1998 13 September 2001

Appellant : Bharat Construction Co.

Respondent : Cit

Advocate for Pet/Ap. : L.M. Lodha, *for the Assessee Sundeep Bhandawat, for the Revenue*

Judgement :

N.N. Mathur, J.

The Tribunal, Jaipur Bench, Jaipur under section 256(1) of the Income Tax Act, has referred the following question for opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in treating the claim of depreciation as covered in the rate of net profit applied by it ?'

2. The assessee-firm, carrying on construction business, had shown a net profit of 5.6 per cent on total contract receipts of Rs. 64,30,344. As most of the expenses including the labour payments were unvouched, the assessing authority applied

the provisions of section 145 of the Income Tax Act, 1961, and determined the income of the assessee by applying net profit rate of 8 per cent on the total receipts. This resulted in a net addition of Rs. 1,36,444. The Commissioner (Appeals) gave relief of Rs. 36,000 and retained the addition to the extent of Rs. 1,00,444. It was contended before the Tribunal that in a construction business, whenever a net profit rate is applied, it is always subject to a further deduction of depreciation. The assessee relied upon some of the circulars of the Board clarifying to the same effect, It may be noticed that the assessing authority did not allow depreciation separately because in his view, if it was so done, the net profit would fall to as low as 5.63 per cent. He, therefore, applied the rate of 8 per cent. The Commissioner (Appeals) brought down the net profit rate to 7.44 per cent. The Tribunal without giving him any reason has simply brought down the rate to 7 per cent. As to how the Tribunal had dealt with the aspect is evident from the part of the order, which is extracted as follows :

'The assessing officer, therefore, raised the net profit rate from 5.63 per cent to 8 per cent. After the relief given by Commissioner (Appeals), the net profit rate comes to 7.44 per cent and not below 6 per cent as contended by the learned Departmental Representative. In the circumstances, we are of the view that if a net profit rate of 7 per cent is applied, it would be fair and would meet the ends of justice. The net profit rate of 7 per cent would also cover the allowance of depreciation and interest. No further deduction be allowed in respect of those two items. We direct accordingly.'

3. Mr. Bhandawat, learned counsel for the revenue, has tried to bank upon section 40(b) of the Income Tax Act, 1961. In our view, section 40(b) of the Act is not attracted in the instant case. The instant reference pertains to the assessment year 1992-93. The amendment of section 40(b) of the Act by Finance Act, 1992, came into effect from 1-4-1993. Thus, it applies in relation to assessment year 1993-94.

4. In CIT v. Jain Construction , this court has taken a view that the Central Board of Direct Taxes has a power to issue circulars and they are binding on the income-tax authorities. In the instant case, the Tribunal has not taken into consideration

the circulars of the Central Board of Direct Taxes and simply ordered that the net profit rate of 7 per cent will cover the allowance of depreciation and interest. In our opinion, the Tribunal was wrong in treating the claim of depreciation as covered in the rate of net profit of 7 per cent.

5. The reference is, accordingly, answered and returned to the Tribunal, Jaipur Bench, to decide the appeal afresh after giving opportunity of hearing to the assessee as well as the revenue department in the light of law laid down in Jain Construction Co.'s case (supra).

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