

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 287 OF 2003

11-12-2014

BETWEEN

Commissioner of Income Tax-I, Visakhapatnam

...Appellant

And

M/s. Inter Continental Constructions, 49-28-5/1, Madhuranagar,
Visakhapatnam

.....Respondent

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 287 OF 2003

JUDGMENT: (per the Hon'ble Sri Justice L. Narasimha Reddy)

Order dated 08-04-2003 passed by the Visakhapatnam Bench of the Income Tax Appellate Tribunal (for short, 'the Tribunal') in I.T.A No.921/H/97 referable to the assessment year 1994-95 is under challenge in this appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, 'the Act').

The following questions are raised:

“(a) Whether on the facts and circumstances of the case the Appellate Tribunal is justified in estimating the Net Profit at 11.5% as against 12.5% as determined by Assessing Officer and whether such a deduction is based on material on record?”

(b) Whether the Appellate Tribunal is justified in directing grant of deduction on account of partner’s capital and salary to partner’s and also interest and financial charges?”

The respondent is a civil contractor. In its returns for the assessment year 1994-95, it has shown receipt of Rs.96,81,456 from the contracts and a sum of Rs.2,63,680/- in the form of lorry hire charges. The assessing officer did not believe the figures, particularly those in relation to the civil contracts. He has chosen to invoke Section 145 of the Act and estimated net profit at 12.5% on the net contract receipts. Depreciation was allowed from the estimated net profit but deduction of interest on capital and salary paid to the partners was disallowed.

The respondent carried the matter in appeal to the Commissioner of Income Tax (Appeals), Visakhapatnam. The Commissioner directed the assessing officer to take the estimated net profit at 11.5% as against 12.5%. He has also allowed deduction of interest on capital arranged by the partners and amount paid as salaries to the partners. Deduction of interest on loans was disallowed. Therefore, the respondent carried the matter in further appeal to the Tribunal. Following the order passed by the Hyderabad Bench in I.T.A No.1057/Hyd/1988, the Tribunal allowed deduction of interest on other loans also. Hence, this appeal by the Revenue.

Sri S.R. Ashok, learned Senior Standing Counsel for the Revenue submits that once the assessment is shown under Section 145 of the Act, it is deemed to be comprehensive and no other deductions are permissible. He submits that Section 145 of the Act is a typical provision which can be pressed into service, where the assessing officer is not satisfied about the facts and figures furnished by the assessee and the figure that emerges out of such exercise is so comprehensive that it does not permit of any other and usual deductions. He contends that the exercise is akin to the one under Section 44AD of the Act, under which separate deductions provided for under Sections 30 to 38 of the Act are impermissible and in fact, are deemed to have been effected.

Sri Ch. Pushyam Kiran, learned counsel for the respondent, on the other hand, submits that Section 145 of the Act provides an option to an assessee in cash or mercantile system of accounting and gives an option to the assessing officer to take recourse to the best judgment assessment under Section 144 of the Act and beyond that, it does not prohibit the ordinary exercise to be undertaken vis-à-vis a return directly or indirectly. He submits that the Tribunal has taken the correct view of the matter and the order does not warrant interference.

The factual background of the case has already been furnished in the preceding paragraphs. The respondent posted two

items of income, one in the form of receipt from civil contracts and the other in the form of hire of vehicles. The assessing officer did not believe the figures pertaining to the first item of the income. Obviously, by taking recourse to Section 145 of the Act and thereby to Section 144 of the Act, he assessed the income at 12.5% on the total receipts from that source. It is important to note that he allowed depreciation from the estimated net profit, but disallowed the deduction of interest on capital and salaries paid to the partners. In the appeal preferred by the respondent, the Commissioner granted relief to the extent of reducing the estimated net profit by 1% and allowed deduction of (a) interest on capital arranged by partners and (b) salaries paid to the partners. He disallowed interest on other loans. The Tribunal granted that part of the relief also.

The entire controversy turns around the question as to whether in an assessment made by an assessing officer under Sections 145 and 144 of the Act, deductions provided for under Sections 30 to 38 of the Act are permissible. It has already been mentioned that the learned Senior Standing Counsel for the department pleaded that the assessment of that category is comprehensive and ordinary deductions are deemed to have been made.

There is evidence to show that the assessing officer himself was not consistent. If in fact, the exercise undertaken under Sections 145 and 144 of the Act is so comprehensive, there was no occasion to allow any deduction at all. However, depreciation

under Section 32 was allowed by him, in the order of assessment itself. Secondly, none of those two sections contain any provision to the effect that the deductions under Section 32 to 38 of the Act are deemed to have been made. It is important to take note of Section 44AD of the Act for comparison. Sub-section (2) therein reads as under:

“Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

Provided that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.”

Once a provision of that nature is not incorporated under Sections 144 and 145 of the Act, the contention of the department in this behalf cannot be accepted. The first question is answered in the affirmative.

Answer to the second question, would in fact depend upon the answer of the first question. Once we hold that even where the assessment is done under Section 145 of the Act, normal deductions are to be allowed, there is no way that the assessing officer could have denied deduction of the salaries to the partners and interest on financial charges. It is not even mentioned that the claims are not factually correct. We, therefore, answer the second question also against the Revenue and in favour of the assessee.

The Tribunal has taken the correct view of the matter. We, therefore, dismiss the appeal. There shall be no order as to costs.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

11-12-2014

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