In the High Court for the States of Punjab and Haryana at Chandigarh

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ITA No.508 of 2007

Date of decision:4.4.2008

The Commissioner of Income Tax ,Rohtak Appellant

Versus

Anil Kumar Arya .. Respondent

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr.Justice Rakesh Kumar Garg

Present: Mr.Yogesh Putney, Advocate
for the Revenue/appellant.

Rakesh Kumar Garg,J

1. The Revenue has filed the present Appeal under Section 260A of the Income Tax Act, 1961(for short 'the Act') against the order dated 31.1.2007 passed by the Income Tax Appellate Tribunal, Delhi Bench(I), Delhi (for short 'the Tribunal'), in ITA No.122/DEL/2005 for the assessment year 2001-02 raising the following proposed substantial questions of law: -

> "1)Whether on the facts and in the circumstances of the case , the Hon'ble ITAT has erred in law and on facts in upholding the order of CIT(A) in deleting the addition of Rs.37,09,580/- computed on the basis of applying 8 % profit from contract receipts of 28 trucks because the case of the assessee falls outside the ambit of section 44AE as the amendments at any time during the previous year in section 44AE is effective from 1.4.2004. The assessee case is related to A.Y. 2001-02, hence

clause at any time during the year in section 44AE is not applicable in the case of the assessee in the relevant assessment year i.e., A.Y.2001-02 ?

2) Whether on the facts and in the circumstances of the case , the Hon'ble ITAT has erred in law in upholding the order of learned CIT(A) deleting the addition of Rs.6,62,425/- on account of income of 5 trucks on the same basis which were owned by the assessee but not used in the tender of M/s Satpriya & Sons during the year under consideration ?

3)Whether on the facts and in the circumstances of the case , the Tribunal has erred in law in not adjudicating the ground of appeal of the revenue in respect of addition deleted by the CIT(A) at Rs.4,00,000/- on account of repair and renovation of flat and Rs.13,95,000/- on account of unexplained investment in shares?

4)Whether on the facts and in the circumstances of the case , the Tribunal has erred in law ignoring the facts that the TDS of the receipts on form No.16A from these 28 trucks were claimed by the assessee in his return of income and the refund was claimed by him and has been received by the assessee on all these 28 trucks ?

5)Whether on the facts and in the circumstances of the case , the Tribunal has erred in law in not taking into account the provision of section 199 of the Income Tax Act which stipulate that any deduction made in

accordance with section 194 C of the Act and paid to the Central Govt. shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to him on production of certificate u/s 203 of Income Tax Act on the assessment made under this Act for the A.Y. for such income is assessable provided that where the income is assessable to any other person the credit shall be given to such other persons in such circumstances as may be prescribed.?"

The assessee is a transport contractor and is engaged in the business of supplying oil tankers on hire to various oil companies. The return of income in this case was filed by the assessee on 25.9.2001 declaring total income of Rs.1,96,590/-. The said return was processed under Section 143(1)(a) of the Act. Later on the case was selected for scrutiny. The assessee was issued notice under Section 143(2) of the Act.

Reply was filed by the assessee. No books of account are stated to have been maintained by him on the plea that his case is covered under the provisions of Section 44 AE of the Act. The Assessing Officer reached the conclusion that provisions of Section 44 AE are not applicable in the case of the assessee and the assessee was required to maintain regular books of account and get these audited as per Section 44 AA and 44 AB of the Act. The Assessing Officer estimated the total income of the assessee on the basis of gross receipts earned by him by applying a net profit of 8 %

and made additions vide his order dated 27.2.2004.

Aggrieved against this order, the assessee filed an appeal before the Commissioner of Income Tax(Appeals), Rohtak (for short 'the CIT(A)'). The CIT (A), Rohtak vide his order dated 28.10.2004 partly allowed the appeal and held that at no point of time, the assessee owned more than 9 trucks during the accounting year of appeal and directed the assessment of the income from business of trucks to be made at Rs.1,96,000/- as returned plus Rs.24000/-.

Not satisfied with the order of the CIT(A), Rohtak, the revenue filed the present appeal challenging the said order before the Tribunal. The main argument of the revenue before the Tribunal was that the assessee had failed to produce the books of account or the registration certificates of various tankers/trucks to verify as to whether or not the assessee was owning more than 10 trucks so as to verify the applicability of Section 44 AE of the Act. The Tribunal found that the dispute is essentially factual in nature and as per the computation of income filed by the assessee, the total number of tankers owned by the assessee does not exceed 10 at any time during the previous year relevant to the assessment year under consideration and there is no material brought on record by the Revenue to controvert the said finding and therefore, the provisions of Section 44 AE have been rightly held to be applicable to the assessee.

We have heard Mr.Yogesh Putney, Advocate learned counsel for the Revenue and perused the record. The Tribunal has

given a pure finding of fact to the effect that total number of trucks owned by the assessee does not exceed 10 at any point of time during the assessment year under consideration and there is no material brought on record by the Revenue to controvert the said factual finding. Section 44 AE is a special provision for computing the profits and gains from the business of plying, hiring for lease of goods carriages. It provides that income from plying, hiring, leasing goods carriages shall be computed at Rs.2,000/- per month for every vehicle owned by an assessee. The provisions of Section 44 AE of the Act are applicable to only those assessees who do not own more than ten goods carriage.

Since the Tribunal has found as a fact that the total number of tankers owned by the assessee does not exceed 10 at any point of time during the relevant period. The provisions of Section 44 AE of the Act are applicable in the case of the assessee and therefore, the provisions of Section 44 AE have been rightly applicable to the case of the assessee. No other point has been argued by the learned counsel for the Revenue.

In view of the finding of fact, we find no infirmity in the order of the Tribunal. No substantial questions of law arises from the order of the Tribunal. Thus, the appeal filed by the Revenue being devoid of any merit is hereby dismissed.

(RAKESH KUMAR GARG)
JUDGE

April 4,2008
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(SATISH KUMAR MITTAL)
JUDGE