

Court No. - 32

Case :- INCOME TAX APPEAL No. - 74 of 2009

Petitioner :- The Commissioner Of Income Tax-I, Kanpur

Respondent :- Shri Nitin Soni

Petitioner Counsel :- S.C.

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

Challenging the order dated 3rd September, 2008 passed by the Income Tax Appellate Tribunal, Lucknow Bench 'B', Lucknow (hereinafter referred to as 'the Tribunal') in I.T.A. No. 301/LUC/2007 for the assessment year 2001-02, the department has filed the present appeal.

In the memo of appeal, the following substantial question of law has been raised:

"1. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in confirming the order of the Ld. CIT(A)-I, Kanpur in deleting the addition of Rs.29,21,738/- made by the AO on a/c excess generation of income by invoking the provisions of section u/s 56(1) of the Act without appreciating that assessee failed to explain source and nature of generation of his capital."

Heard Sri Dhananjay Awasthi, learned counsel for the appellant and Sri Suyash Agrawal, learned counsel appearing for the assessee-opposite party.

The assessee is proprietor of M/s Nitin Freight Carrier. He is also one of the directors of Northern Alkalies (P) Ltd. In the return, he disclosed income under Section 44AE of the Income Tax Act (hereinafter referred to as 'the Act') with the allegation that he possesses only eight trucks. Assessing Officer has made certain additions in the income of the assessee on the ground that the assessee has not been able to reply as to how he has been his meeting daily expenses. The plea raised under Section 44AE of the Act was rejected by him on the ground that the assessee has got income from other sources. The matter was carried in appeal before the CIT(A) by the assessee. The appeal was partly allowed vide order dated 08.02.2007 by the CIT(A). The matter was further carried in second appeal by the department before the Tribunal. The Tribunal has dismissed the appeal by order dated 03.09.2008, presently under appeal.

Sri Dhananjay Awasthi, learned counsel for the appellant submits that it was found by the Assessing Officer that the assessee has got income from other sources. Elaborating the argument, it was submitted that even if, Section 44AE of the Act is made applicable, it was for the assessee to explain the excess income found. He submits that the Assessing Officer was justified in making addition in the income at

the hands of the assessee from other sources.

In reply, Sri Suyash Agrawal, learned counsel for the assessee submits that in view of the fact that the assessee has got eight trucks, there was no question of making any addition at the hands of the assessee from other sources. More so, no other source has been mentioned in the assessment order. He also placed reliance upon the judgment of Punjab & Haryana High Court in the case of **Commissioner of Income Tax v. Anil Kumar Arya (2009) 310 ITR 205**.

Considered the respective submissions of the learned counsel for the parties and perused the record.

Section 44AE inserted by Finance Act, 1994 provides special provision for computing profits and gains of business of plying, hiring or leasing goods carriages. It opens with a non-obstante clause by giving an overriding effect over sections 28 to 43C, in the case of an assessee who owns not more than ten goods carriages. Income of such assessee chargeable to the tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2). The words "shall be deemed" are the key words and they are indicative of the legislative intent that the tax shall be chargeable on presumptive income, computed as per sub-section (2) of the Section 44AE. The scope and effect of the above section has been explained in departmental circular No. 684 dated 10.06.1994. The relevant portion is extracted below:

"Estimated Income Method for taxpayers engaged in the business of plying, leasing or hiring trucks owned by them.—32. A new section 44AE has been inserted in the Income-tax Act with a view to providing for a method of estimating income from the business of plying, hiring or leasing trucks owned by a taxpayer. The scheme applies to persons owning not more than ten trucks. It is not applicable to the persons who do not own any truck but operate trucks taken on hire. The income from each truck, being a heavy goods vehicle, will be estimated at Rs.2,000/- for every month or part of a month during which the truck is owned by the assessee. The income from each truck, other than a heavy goods vehicle, will be estimated at Rs.1,800/- for every month or part of a month during which the truck is owned by the assessee. In either case, the taxpayer can declare his income from trucks at a higher amount than that specified above.

Illustration (1):

Illustration (2):

32.2 The estimated income is comprehensive. All deductions under section 30 to 38 including depreciation, will be deemed to have been already allowed and no further deduction will be allowed under these sections. The written down value will be calculated, where necessary, as if depreciation as applicable has been allowed. In the case of firms, the normal deductions to the extent allowed under clause (b) of section 40 will be allowed.

32.3 An assessee who filed the return, estimating income on the basis of the specified amount per truck or estimating a higher income, will neither be required to maintain books of account under the provisions of section 44AA, nor required to get accounts audited under the provisions of section 44AB, in respect of his income from the business of plying, hiring or leasing trucks. However, even such an assessee has to comply with the requirements of both sections 44AA and 44AB in respect of his businesses which are not covered by this scheme.”

It is not in dispute that the assessee has got eight trucks. It was also not disputed by the learned standing counsel for the department that the provisions of Section 44AE of the Act are applicable. Emphasis was laid by him that the additions made in the hands of the assessee was justified as the assessee has income more than that which is calculated as per Section 44AE of the Act. It is difficult to accept the aforesaid submission of the learned standing counsel. The very purpose and idea of enactment of such provision like Section 44AE of the Act is to provide hassle free proceedings. Such provisions are made just to complete the assessment without further probing provided the conditions laid down in such enactments are fulfilled. The presumptive income, which may be less or more, is taxable. Such an assessee is not required to maintain any account books. This being so, even if, its actual income in a given case, is more than income calculated as per sub-section (2) of Section 44AE, cannot be taxed.

Thus, it follows the query of the Assessing Officer as to how the assessee met his daily expenses, there being no withdrawal and conclusion of additional income was uncalled for.

The Assessing Officer as well as the counsel for the revenue attempts to justify the addition with the aid of Section 56 i.e. income from other sources. It has no application here for the simple reason, as held by the Apex Court where an income can appropriately fall under Section 28 as business income, or any other specific head of income, no resort can be made to Section 56 vide ***S.G. Mercantile Corpn. (P.) Ltd. v. Commissioner of Income-tax (1972) 83 ITR 700.***

Income, if it is chargeable to tax under any heads specified in Section 14, item A to E, it cannot be changed as income from other sources. Meaning thereby that if a particular income is referable to any one of the specified heads A to E, such income is not chargeable under Section 56, even if, it cannot be taxed under that head. Therefore, we reject the argument of the revenue.

In view of the fact that Section 44AE of the Act has been held to be applicable, which has not been disputed by the learned standing counsel for the department, we find that the CIT(A) and the Tribunal were justified in deleting the

additions made holding that it cannot be treated as income from other sources. It may be stated here that the Assessing Officer has not given any other head of the income of the assessee. Only ground for making the addition is that the assessee was not able to explain the discrepancies in the account-books, which cannot be ground for making addition as income from other sources. Resultantly, the addition made by the Assessing Officer due to increase in the capital cannot be taxed under Section 56 of the Act as income from other sources as the accretion, if any, in the capital is relatable to profit from transport business of the assessee. A reading of the assessment order would show that the addition was made on account of excess generation of income of the assessee from the goods carriages business, under Section 56 of the Act.

We do not find that any substantial question of law is involved in the appeal. It is dismissed summarily.

(Prakash Krishna,J)

(Ashok Bhushan,J)

Order Date :- 26.4.2012

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