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Girdhari Lal Vs Commissioner of Income Tax

IT Appeal No''s. 5,36 to 38 of 1999 And 51 of 2000 20 September 2001

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 20, 2001

Acts Referred:
Income Tax Act, 1961 â€" Section 260A

Citation: (2001) 119 TAXMAN 863

Hon'ble Judges: Jawahar Lal Gupta, J; Jawahar Lal Gupra, J; Ashutosh Mohunta, J

Bench: Full Bench

Advocate: A.K. Mittal, Akshay Man and Rakesh Garg, for the Assessee R.P. Sawhney and Rajesh Bindal, for the Revenue, for the Appellant;

Judgement

Gupta, J.

This order shall dispose of five appeals, viz., Income Tax Appeal Nos. 5, 36 to 38 of 1999 and 51 of 2000. The learned counsels for the parties

have referred to the facts as averred in Income Tax Appeal No. 51 of 2000. These may be briefly noticed.

2. The assessee is a contractor. For the assessment year 1991-92, the assessee declared an income of Rs. 9,29,800. Vide order dated 18-9-

1992, the assessing officer applied a net profit rate of 12.5 per cent ''on the total contract receipts'' of Rs. 2,97,04,200 and fixed the taxable

income at Rs. 33,94,810.

3. The assessee filed an appeal. The Commissioner (Appeals) vide order dated 17-11-1992 confirmed the net rate of profit at 12.5 per cent.

However, a deduction of Rs. 8,13,344 was allowed on account of depreciation. Still further, the assessee''s claim for deduction of Rs. 5,15,334

on account of interest was also allowed.

4. The assessee and the revenue filed separate appeals. Both the appeals were decided, vide, order dated 29-9-1999. The Tribunal held that ''net

profit rate of 10 per cent will be reasonable on the facts and circumstances of the case as compared to the net profit of 5.6 per cent applied by the

learned Commissioner (Appeals)". It was further held that the "net profit rate has taken into account the claim of depreciation". Hence, this appeal

u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the assessee.

5. In the memorandum of appeal, five questions have been raised. However, at the hearing, the counsel pressed the following two questions:

1. Whether, on the facts and in the circumstances of the case, on correct interpretation of the Central Board of Direct Taxes, Circular dated 31-

8-1965, the Income Tax Appellate Tribunal was justified in not allowing the assessee the depreciation of Rs. 8,13,344 and the claim of interest

amounting to Rs. 5,15,334 ?

2. Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal disallowing depreciation and interest

being a statutory allowance and the other having been allowed in the past, is legally sustainable ?

Counsel for the appellants contended that in view of the Circular dated 31-8-1965, the claim for depreciation and interest had been wrongly

disallowed. The claim was controvert by Mr. R.P. Sawhney, counsel for the revenue.

6. So far as the claim for depreciation is concerned, the matter has been considered by this Bench in Income Tax Reference No. 55 of 1994 and

the connected appeals. For the reasons stated in the order, we find that the claim of the assessees is well-founded. The matter shall be considered

by the authorities in the light of the Circular dated 31-8-1965. The consequences shall follow.

So far as the claim for interest is concerned, it is primarily a question of fact. The Tribunal has found that if the claim for depreciation and interest is

accepted, the net profit rate would work out to 2.58 per cent. In the absence of any exceptional circumstances, it would clearly be too low. Still

further, we find that the Circular dated 31-8-1965 does not relate to consideration of a claim for interest. In any case, the counsel for the

appellants did not refer to any evidence to show that the claim for deduction on account of interest was well-founded and that it had been wrongly

disallowed.

No other point was raised.

In view of the above, it is held as under:

(i) In view of the Circular dated 31-8-1965, the authorities were bound to consider and decide the claim of the assessees with regard to

depreciation. In case, the necessary particulars have been furnished and the terms of the circular have been complied with, the claim for deduction

on account of depreciation shall be considered.

(ii) So far as the claim for deduction on account of interest is concerned, we find that in the circumstances of these cases, no substantial question of

law arises. Thus, the question is answered against the assessees.

7. The appeals are, accordingly, disposed of. In the circumstances, there will be no order as to costs.