
Commissioner of Income Tax Vs Girnar Construction Co.

Income Tax Appeal No. 27 of 1999

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: Feb. 8, 2002

Acts Referred:

Income Tax Act, 1961 " Section 32, 40A(2)

Citation: (2003) 181 CTR 248 : (2003) 261 ITR 463

Hon'ble Judges: Y.R. Meena, J; A.C. Goyal, J

Bench: Division Bench

Advocate: J.K. Singhi and Anuroop Singhi, for the Appellant; Vijay Choudhary, for the Respondent

Final Decision: Dismissed

Judgement

1. The appeal was admitted in terms of the following questions :

1. Whether the provisions of Section 40A(2)(b) are applicable in the present matter where the salaries/payments were made to the close relatives

of partners of the assessee-firm ?

2. Whether the Assessing Officer is bound to admit the entries made in the cash books even if their genuineness is doubted and further is it

necessary for the Assessing Officer to first reject the cash books, purchase vouchers and expenses bills, etc., even if he disagrees with the same for

the purpose of making addition or for rejecting the claim of the assessee-firm ?

3. Whether the learned Income Tax Appellate Tribunal was right in its wisdom to allow the claim of Rs. 2,13,000 on account of depreciation in

new bodies even if the bills for the same were not produced and in spite of it expenditure written on letter head that too without any sales tax

number on it was produced ?

4. Whether the impugned order passed by the learned Income Tax Appellate Tribunal suffers from perversity of law and facts or not ?

5. Whether the Income Tax Appellate Tribunal was right in its wisdom to allow deletion of disallowance of Rs. 1,16,000 out of salary Rs. 28,341

out of diesel and oil consumption ?

6. Whether the law declared by the Supreme Court in a reported case Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs.

Associated Rubber Industry Ltd., Bhavnagar and Another, and McDowell and Co. Ltd. Vs. Commercial Tax Officer, does not have important

bearing in the present case ?

2. The assessment year involved is 1990-91. The assessee is a registered firm, deriving its income from building trucks/dumpers on hire/rental

basis. The assessee-firm has filed its return on August 27, 1990. According to the Assessing Officer the books of account are not supported by

bills and vouchers and even salary has been paid to close relations/which is hit by the provisions of Section 40A(2)(b) of the Act. Question No. 1

relates that was disallowed by the Assessing Officer, therefore, the salary paid to Shri Sumati Kumar and Padam Kumar, i.e., their relatives and

the salary paid to them is unreasonable. The finding of the Tribunal is that the salary has been paid for work which Shri Sumati and Shri Padam

Kumar have done for the assessee. Though they are relatives Rs. 1,000 per month to a person for the work they have done in our view cannot be

said to be unreasonable. Otherwise, also that finding of fact of the Tribunal that salary paid to Sumati and Padam Kumar is for the purpose of

business and accounted for it cannot be said unreasonable in the facts and circumstances of the case.

3. The next issue relates to whether the Tribunal has wrongly allowed depreciation on the new bodies of the dumpers to the tune of Rs. 2,13,000.

Learned counsel submits that whether the new bodies were built up of the dumpers, no evidence has been shown except a receipt on the letter

head. Learned counsel for the assessee submits that receipt of the body builder has been submitted though on the letter head but thereafter Vishwa

Karma Truck Body Repairs who did this job was examined and he accepted that he has done the work of body building of the dumpers and

trucks and received the amount against them. Whether the new body was built by Vishwa Karma Truck Body Repairs or not that is basically a

question of fact and on finding of facts and the material on record, it cannot be said that the finding of fact is perverse. No interference is called for.

Similarly, the assessee has claimed for salary payment to drivers, cleaners and staff after comparing the net profit in the earlier year. The Assessing

Officer has disallowed Rs. 1,16,000 against these expenses on estimate basis comparing this net profit of this year with the earlier year. In appeal

the Tribunal has considered the fact that without rejecting the books of account and specially when the statements of six persons were recorded

regarding payment of salary who confirmed that the payment has been made to them on account of salary merely on the basis of net profit no

disallowance be made, in para. 6, the Tribunal has concluded its finding.

4. When the employees had filed affidavits confirming the payment of salary, they have given the details of dumpers and trucks on which they are

working. Similarly, that the net profit is less than in the earlier year cannot be made the base for any disallowance on account of the salary paid to

the employees. No interference is called for in the order of Tribunal on this account also.

5. Similarly, the Assessing Officer has disallowed Rs. 28,341 in diesel and oil account. Whether the diesel and oil were consumed in the trucks and

dumpers of the assessee when that has been fully supported by the vouchers and confirmed and that has been accounted in the books of account,

when the books of account have not been rejected, in our view there is nothing wrong in the order of the Tribunal in deleting the addition of Rs.

28,341. Considering the finding of the Tribunal and material on record, it cannot be said that the finding of the Tribunal is perverse.

6. When the finding of the Tribunal is not perverse on the facts, no interference is called for in the order of the Tribunal. In the result, there is no

merit in the appeal. The appeal stands dismissed.