

(2006) 02 KL CK 0066

High Court Of Kerala

Case No: IT Appeal No. 58 of 2001

Geo Tech Construction
Corporation

APPELLANT

Vs

Deputy Commissioner of Income
Tax and AnotherRESPONDENT

Date of Decision: Feb. 6, 2006**Citation:** (2006) 203 CTR 493**Hon'ble Judges:** K.T. Sankaran, J; K.S. Radhakrishnan, J**Bench:** Division Bench**Advocate:** P. Balachandran, for the Appellant; P.K.R. Menon and George K. George, for the Respondent**Final Decision:** Dismissed

Judgement

K.S. Radhakrishnan, J.

Assessee is a firm engaged in the business of executing civil contracts. For the asst. yr. 1988-89 assessee had filed a return disclosing net loss of Rs. 39,75,374. P&L a/c disclosed contract receipts of Rs. 1,52,66,122 and other income of Rs. 1,23,759. The expenditure incurred and debited to the P&L a/c was Rs. 1,94,92,229 and the book loss apportioned between the partners was Rs. 41,02,347. While the expenditure was accounted for on an accrual basis, receipts were disclosed only on cash basis and no work-in-progress as at the beginning of the year or at the end of the year was disclosed.

2. The AO therefore estimated the closing work-in-progress at Rs. 18,73,468 and the opening work-in-progress at Rs. 16,60,034 and added the difference between these two figures of Rs. 2,13,434 to the total income on account of work-in-progress. Assessee aggrieved by the order of the assessing authority took up the matter in appeal before the CIT(A), Kochi and had pointed out that for the years 1982-83 and 1984-85 the inclusion of the closing work-in-progress be deleted and the appeal be allowed. The CIT however allowed the appeal and ordered deletion of addition of Rs.

2,13,434. Aggrieved by the said order Revenue took up the matter in appeal before the Tribunal. Tribunal allowed the appeal holding that the addition made was moderate and took the view that the earlier decision of this Court in [Commissioner of Income Tax Vs. Geo Tech Construction Corporation](#), was rendered on a different fact situation and the profit disclosed for those years was reasonable. Assessee is aggrieved by the order of the Tribunal and has come up in this appeal,

3. Counsel appearing for the appellant submitted that a Bench of this Court had accepted the system of accounting followed by the assessee for the years 1981-82, 1982-83 to 1984-85 therefore there is no reason for adding the work-in-progress. Counsel submitted that the Tribunal was not justified in restoring the addition of Rs. 2,13,434 as work-in-progress and that the method of computation adopted by the AO was not legal. Counsel placed reliance on the decision of this Court in CIT v. Geo Tech Construction Corporation (supra). Reference was also made to the decision of this Court in [S. Veeraiah Reddiar Vs. Commissioner of Income Tax, Travancore-Cochin, Bangalore](#), .

4. Senior counsel appearing for the Revenue Sri P.K. Ravindranatha Menon submitted whatever method of accounting is adopted by the assessee in the case of trading venture, for computing the true profits of the year the work-in-progress must be taken into account. Counsel placed reliance on the decision of the Supreme Court in [P.M. Mohammed Meerakhan Vs. Commissioner of Income Tax, Kerala](#), , [The Commissioner of Income Tax, Madras Vs. A. Krishnaswami Mudaliar and Others](#), and CIT v. British Paints India Ltd. : [1991]188ITR44(SC) .

5. The accounting process is an individual function of the assessee. Assessee is free to follow its own method of accounting like cash system of accounting, mercantile system of accounting or hybrid system. But when the method of accounting adopted by the assessee does not disclose the true income of the assessee it is open to the AO to adopt any method so as to reach at the true income of the assessee. Apex Court in Krishnaswamy Mudaliar"s case (supra) held that whichever method of book-keeping is adopted, in the case of a trading venture for computing the true profits of the year the stock-in-trade must be taken into account. The Court held that if the value of the stock-in-trade is not taken into account, in the ultimate result the profit or loss resulting from trading is bound to get absorbed or reflected in the stock-in-trade unless the value of the stock-in-trade remains unchanged at the commencement of the year and the end of the year.

6. In British Paints India Ltd. "s case (supra) the apex Court held, it is not only the right but the duty of the AO to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom. The Court held that it is incorrect to say that the officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. Further, the Court pointed out that there is no estoppel in that matters and the officer is not bound by the method followed in the earlier

years. The Court held each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the respondent was found to be such that income could not properly be deduced therefrom. It was therefore not only the right but the duty of the ITO to act in exercise of his statutory power for determining what, in his opinion, would be the correct income.

7. We may also indicate in Geo Tech Construction Corporation's case (supra), the Division Bench of this Court had no occasion to refer to the decisions of the apex Court mentioned above and held as follows :

The Tribunal felt that unless a situation emerges that profits disclosed by the assessee as a result of his own method of accounting are so unreasonable and patently unacceptable leading to the situation of rejection of books of account, estimation and its consequent addition on the basis of valuation of work-in-progress would not get any justification on factual basis. The Tribunal held that there is no basis for resort to the estimate and in the process affirmed the decision of the appellate authority referred to above.

On the basis of the above factual prologomena we feel that the situation is purely a question of fact.

We have already indicated each assessment year is a separate unit and so far as the present case is concerned, unless the work-in-progress is taken into consideration, method adopted by the assessee will be such that the income cannot properly be deduced from the accounts and therefore correct computation of work-in-progress has to be made for arriving at the true profits. Assessing authority noticed that unless the value of the work-in-progress was included (in) the method employed by the assessee it would not be possible to deduce the correct income. We are of the view, the assessing authority has got not only a right but a duty to make addition to the total income on account of the work-in-progress.

8. We, therefore, find no infirmity in the procedure adopted by the AO. Unless and until work-in-progress is also computed it would not be possible to take note of the correct income. We are, therefore, of the view that the assessing authority is bound to adopt such method of computation as he deemed appropriate for proper determination of the true income of the assessee. We therefore find no infirmity in the order of the Tribunal. Appeal therefore lacks merits and the same is dismissed.