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Andhra Pradesh High Court

Case No: Income Tax Tribunal Appeal No. 48 of 2002

The Commissioner of Income Tax	APPELLANT
Vs	
Y. Ramachandra Reddy	RESPONDENT

Date of Decision: July 13, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 10A, 10AA, 10B, 10BA, 144
- Limited Liability Partnership Act, 2008 - Section 2

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: J.V. Prasad, Advocate for the Appellant; A.V. Krishna Koundinya, Senior Counsel, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
This appeal under Section 260-A of the Income Tax Act, 1961 (for short "the Act") is preferred by the Revenue feeling aggrieved by the order dated 10.08.1999 passed by the Hyderabad Bench "A" of the Income Tax Appellate Tribunal (for short "Tribunal") in I.T.A. No. 1336/H/1997, by raising the following questions of law:

"1. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in directing the Assessing Officer to allow depreciation and interest payments from the estimate of profit made at 12%?

2. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in directing the Assessing Officer to grant reliefs on those items which are not claimed by the assessee?

3. Whether on the facts and in the circumstances of the case the Tribunal is correct in granting depreciation though it was already granted by the Assessing Officer?"

2. The respondent is a civil contractor, and is an assessee under the Act. He submitted returns for the Assessment Year 1994-95 declaring loss of Rs. 15,24,198/-. Thereafter, revised returns were filed showing enhanced figures of loss, being Rs. 93,11,879/-. The Assessing Officer issued notice to the respondent. The books of account were not believed and obviously, by taking recourse to Section 144 of the Act, the Assessing Officer passed an order to the effect that the total receipts are to the tune of Rs. 9,52,52,636/- and net profit at 9%, works out to Rs. 85,72,737/-. A sum of Rs. 1,49,294/- was added towards miscellaneous receipts. He took the view that since the profit is determined on estimation basis, deduction of depreciation or interest would not be allowed. However, unabsorbed depreciation of Rs. 14,77,938/- for the Assessment Years 1990-91 and 1991-92, was deducted and taxable income was arrived at Rs. 72,71,820/-.

3. Feeling aggrieved by the order passed by the Assessing Officer, the respondent filed an appeal before the Commissioner of Income Tax (Appeals) (for short "Commissioner"). Through his order dated 30.06.1997, the Commissioner took the view that the net profits ought to have been worked out at 12% of the total receipts and deduction of depreciation and interest ought to have been allowed, as usual.

4. The appellant on the one hand and the respondent on the other filed appeals before the Tribunal assailing the order of the Commissioner. The Tribunal dismissed both the appeals and confirmed the order passed by the Commissioner. The Revenue approached this Court through this appeal.

5. Sri J.V. Prasad, learned counsel for the appellant submits that though the Commissioner was justified in taking the net profits at 12%, having regard to the nature of business undertaken by the respondent, he was not correct in permitting deduction of depreciation and interest. He submits that the exercise undertaken by the Commissioner, or for that the Assessing Officer is akin to the one provided for under Section 44AD of the Act, which provides for comprehensive exercise of arriving the net profits at a fixed percentage and that would be inclusive of the allowance of depreciation and interest. He submits that the exercise being comprehensive in nature, the two components cannot be dealt with, separately.

6. Sri A.V. Krishna Koundinya, learned Senior Counsel for the respondent, on the other hand, submits that the determination of the taxable income by taking recourse to Section 144 of the Act, namely, best judgment assessment has nothing to do with the allowance of depreciation under Section 32 of the Act. He contends that these two operate on totally different planes and there is hardly any meeting point between them, particularly, at the time when the assessment in question was made.

7. The respondent himself was not sure as to the exact loss sustained by him in the Assessment Year 1994-95. Initially, he declared the loss of Rs. 15,24,198/- and he came forward with a revised return indicating the loss of Rs. 93,11,879/-. That itself was sufficient for the Assessing Officer to disbelieve the books of account and he has chosen to adopt the procedure prescribed under Section 144 of the Act, namely, the best judgment assessment. In matters of this nature, the amount of turnover on the one hand, and the nature of business undertaken by the assessee, on the other, become relevant. The net profits were taken at 9%. The Assessing Officer had extended the benefit of allowance of unabsorbed depreciation for the Assessment Years 1990-91 and 1991-92. However, he refused to allow deduction of depreciation and interest for the concerned Assessment Year.

8. The grievance of the respondent was not much about the percentage, at which the net profit was determined. Rather, it was about the non-allowance of the current depreciation and interest. The matter landed before the Commissioner by way of appeal preferred by the respondent. The Commissioner took into account, the nature of business as well as the non-dependability of the books of account, and took the view that the net profits must be arrived at on total/gross receipts. As regards the allowance of current depreciation and interest, he took the view that there is nothing in law which disentitles the respondent to claim it. He left the matter to the Assessing Officer to workout the details. The appellant as well as the respondent filed appeals before the Tribunal. Through the order under appeal, the Tribunal upheld the order of the Commissioner, in all respects.

9. Though the respondent filed an appeal feeling aggrieved by the enhancement of the percentage of net profit, and it was dismissed, he did not pursue the matter, further. The Department filed this appeal, pleading that current depreciation ought not to have been permitted to be deducted.

10. In the comprehensive, if not complicated exercise to be undertaken with reference to a return, handling the depreciation and interest is an important step, as is the determination the income itself. Wherever the Parliament wanted to deviate from the ordinary procedure for determination of income or for that matter, the depreciation in the process of reckoning the taxable income, specific provisions to that effect are made. While in some cases, such steps are reflected directly in the very provisions of the Act or in other cases they are in the form of the cross reference from other provisions.

11. Section 44AD of the Act reads as under:

"44AD. Special provision for computing profits and gains of business on presumptive basis -

(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of

such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of subsection (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

Provided that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under subsection (1) subject to the conditions and limits specified in clause (b) of section 40.

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of Chapter XVIIC shall not apply to an eligible assessee in so far as they relate to the eligible business.

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of Section 44A and get them audited and furnish a report of such audit as required under section 44AB.

(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to -

i. a person carrying on profession as referred to in sub-section (1) of section 44AA;

ii. a person earning income in the nature of commission or brokerage; or

iii. a person carrying on any agency business.

Explanation- For the purposes of this section, -

(a) "eligible assessee" means -

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of subsection (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C - Deductions in respect of certain incomes" in the relevant assessment year;

(b) "eligible business" means -

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) Whose total turnover or gross receipts in the previous year does not exceed an amount of one crore rupees."

12. For example, Section 44AD of the Act provides for determination of the income of an assessee from the business at 8% of the total turnover or the gross receipts of the previous year under certain circumstances. Sub-section (2) is to the effect that if any deduction allowable under Sections 30 to 38, which takes in its fold the deduction such as depreciation and interest, shall be deemed to have been effected. The procedure under that section, however, applies only when the turnover is below a particular figure which at the relevant point of time was Rs. 40,00,000/-. As of now, it is Rs. 1 Crore. In the instant case, Section 44AD of the Act does not apply because the turnover was above the stipulated amount. Therefore, the feasibility of deduction of turnover and interest cannot be said to have been taken away.

13. The learned counsel for the appellant is not able to point out any provision of law in the Act or Rules made thereunder, which restricts the allowance of the depreciation and interest. On the other hand, the facility created under the Act is so firm and strong that if for any reason it becomes impermissible or unnecessary for an assessee to seek the allowance of depreciation for a particular Assessment Year, he is entitled to carry it forward, for the subsequent years. In such an event, it assumes the character of unabsorbed depreciation. In this very case, the Assessing Officer permitted the allowance of unabsorbed depreciation to the respondent. However, he denied the benefit of the allowance of current depreciation and interest. No reference is made to any provision of law to make such distinction. His understanding of the matter is that Section 44AD of the Act, that provides for a comprehensive formula of determining net profit derived by a civil contract or at 8%, takes in its fold, allowance of depreciation, interest and other benefits. The fact, however, remains that such a provision was not in exercise in the Assessment Year 1994-95.

14. If an assessee is entitled to claim deduction of interest, be it under Section 36(1)(iii) of the Act or any other relevant provision and of depreciation under Section 37 of the Act, in the ordinary course of assessment, there is no reason why the same facilities be not extended to him, merely because the profit is determined on the basis of estimation as was done in the instant case. We are of the view that depreciation and interest, which are otherwise deductable in the ordinary course of assessment, remain the same legal

character, even where the profit of assessee is determined on percentage basis.

15. The conclusions arrived at by us, get support from the Circular dated 31.08.1965 issued by the Central Board of Direct Taxes. Though the Circular was with reference to the 1922 Act, it holds good for the analogous provisions under the 1961 Act.

16. The learned counsel for the appellant relied on a judgment of this Court in Indwell Constructions Vs. Commissioner of Income Tax, . That was a case in which this Court took the view that once the books of account are disbelieved for a particular purpose, they cannot be relied upon in the context of interest. In the instant case, we are concerned with the depreciation. The occasion to deny the deduction of depreciation or interest would arise if only the material placed before the Assessing Authority in proof of purchase of machinery and other items and payment of interest is disbelieved. No finding of that nature was recorded by the Assessing Officer.

17. The appeal is accordingly dismissed. There shall be no order as to costs.

18. The miscellaneous petitions filed in this appeal shall also stand disposed of.