

(2010) 12 MAD CK 0197

Madras High Court

Case No: Tax Case (Appeal) No. 1030 of 2010

The Commissioner of Income
Tax

APPELLANT

Vs

SAS Hotels and Enterprises Ltd.

RESPONDENT

Date of Decision: Dec. 6, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 144, 145(1), 145(2), 145(3), 5

Citation: (2011) 334 ITR 194 : (2011) 203 TAXMAN 90

Hon'ble Judges: Kirubakaran, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: T. Ravikumar, for the Appellant;

Final Decision: Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.

The Revenue has come forward with this appeal raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessing Officer was not justified in detecting the completed contract method for accounting followed by the Assessee for his construction business even though the said method did not reflect the correct profit of the business which ought to include the profits arising / accruing on the incomplete project?

2. The assessment year is 2003-2004. The Assessee is in the business of building construction apart from its other business activities. Indisputably, the Assessee was following mercantile system of accounting and in respect of on-going projects, the Assessee was following completed contract method in accounting its profits derived from construction work and thus such income was being assessed in the relevant year in which the contract was completed.

3. However, for the first time, the Assessing Authority took the view that having regard to Section 5 of the Income tax Act, the system of accounting being mercantile system, the Assessee ought to have disclosed the accrued profit earned even in respect of the on-going projects up to the point of the relevant assessment year. The Assessing Authority by following the decision of this Court in [Commissioner of Income Tax Vs. N.M. Associates](#), proceeded to assess the deemed profit arose or accrued to the Assessee in the relevant accounting year and pass the order of assessment.

4. The Commissioner of income tax (Appeals) having confirmed the said order of assessment, by the order impugned dated 08.01.2010, the Tribunal reversed the orders of the Assessing Authority as well as that of the Commissioner of Appeals. Aggrieved against the same, the Revenue has come forward with this appeal.

5. We heard Mr. T. Ravikumar, learned standing counsel for the Appellant.

6. Having perused the order impugned as well as that of the lower authorities, as noted earlier, indisputably the Respondent/Assessee was all along following the completed work method for accounting its income from its business of construction. It is also not in dispute that for the first item for the assessment year 2003-2004, the Assessing Authority chose to take a different view and held that by virtue of Section 5 of the Act, inasmuch as the Respondent/Assessee was following mercantile system of accounting, it was bound to disclose whatever profit earned or accrued up to the relevant accounting year and on that footing proceeded to pass the order of assessment by following the decision of this Court reported in [Commissioner of Income Tax Vs. N.M. Associates](#),

7. In this context, when we apply Section 145(3) of the Income Tax Act, it specifically stipulates that where the Assessing Authority is not satisfied about the correctness or completeness of the accounts of the Assessee, or where the method of accounting provided in Sub-section (1) or accounting standards as notified under Sub-section (2), have not been regularly followed by the Assessee, the Assessing Authority may make an assessment in the manner provided in Section 144. Therefore, in order to invoke Section 145(3) of the Act and disturb the existing system of accounting, the Assessing Officer must necessarily express his dissatisfaction about the correctness or completeness of the accounts of the Assessee and also note that such system of accounting was not regularly followed by the Assessee, in which event alone, the Assessing Officer can exercise his jurisdiction and make an assessment as provided u/s 144 of the Act.

8. Keeping the above statutory prescription in mind, when we analyse the conclusion of the Tribunal, as set out in paragraph 18, we find that the Respondent/Assessee was hitherto following the completed contract method for accounting its income from the construction work and that it had not given room for any dissatisfaction, inasmuch as nothing has been said in the order of the Assessing

Authority on that score. In such circumstances, if the Respondent/Assessee was regularly following the completed contract method and had not given scope for any complaint in any of the earlier years, it was unnecessary for the Assessing Officer to invoke Section 145(3) of the Act. In order to meddle with the said pattern of accounting, the distinction made out by the Tribunal in regard to the decision of this Court in Commissioner of Income tax v. N.M. Associates reported in [Commissioner of Income Tax Vs. N.M. Associates](#), is also perfectly justified, inasmuch as, in the said decision, indisputably, the Assessee did not maintain proper accounts, which apparently persuaded the Assessing Authority to invoke Section 145(3) of the Act, by which, the calculation of annual profits on the basis of receipts was held to be justified.

9. We fully concur with the conclusion of the Tribunal in having interfered with the orders of the Assessing Authority as well as that of the Commissioner of income tax (Appeals). We are, therefore, not inclined to entertain the substantial question of law, as we do not find any need for the same. The appeal fails and the same is dismissed. No costs.