

HC deletes addition as variation in GP rates of current year and preceding years couldn't justify additions

Summary – The High Court of Gujarat in a recent case of Balkrishna Dyeing & Printing Mills, (the Assessee) held that Addition to profit could not be made on account of suppressed job charges that exceeded profit ratio compared to other years.

ORDER

Aggrieved by the order of Income Tax Appellate Tribunal ("the Tribunal" here-in-after), the present tax appeal is preferred under section 260A of the Income Tax Act (the Act for short) proposing the following substantial questions of law for our consideration :

- "(A) Whether in facts and in law the Tribunal was justified in restricting the addition of Rs. 65,89,082/- to Rs. 13,00,000/- made on account of suppression of job charges without assigning any cogent or credible reasons?
- (B) Whether the Tribunal was justified in restricting the addition of Rs. 48,40,134/- made by the Assessing Officer on account of non genuine labour expenses to Rs. 10,00,000/- without giving any specific reasons?
- (C) Whether the Tribunal was justified in restricting the disallowance towards vehicle and telephone expenses to 10% instead of 20%?"

For the assessment year 2005-2006, the assessee filed the return of income. On scrutiny assessment, the Assessing Officer made certain additions. First such addition was of Rs.65,89,082/- towards suppression of job charges. CIT(Appeals) confirmed the same. When challenged before the tribunal, the tribunal had accepted the decision of the Assessing Officer of rejection of books of accounts. however, noting the fact that once books of accounts has been rejected, profit of the assessee would be required to be estimated. Considering the totality of the facts, it directed the addition of lump-sum of Rs.13 lakhs instead of Rs.65.89 lakhs (rounded off). The tribunal noted that the Assessing Officer had estimated the production after taking into consideration the average job charges of 6.06 per meter estimated production. After considering the gross profit ratio and other factual aspects when such addition has been made by the tribunal, there does not appear to be any error in the decision of the tribunal. We notice that the gross profit ratio reflected in the assessee's accounts for the year under consideration

when compared to earlier years, there could not be any addition of the entire job charges as the same would be relatable to the gross profit & other aspects. No question of law therefore, arises.

With regard to second question, the Assessing Officer noted that the labour payment were inflated and the assessee could not produce evidence in respect of labour contractors. Notice was also issued under section 133(6) of the Act which were returned unserved and the total expense debited by the assessee was to the tune of Rs. 54 lakhs out of which disallowance was made to the extent of Rs. 48 lakhs. When carried before the CIT(Appeals) same was confirmed. However, the tribunal was of the opinion that disallowance of labour expenses to the tune of Rs.48 lakhs was much on a higher side. Again noting the fact that since books were rejected, estimates were necessary to be worked out, it estimated the same to the tune of Rs. 10 lakhs and accordingly rightly restricted the total sum from Rs. 48 lakhs to Rs. 10 lacs. Based completely on factual matrix no error is found in the approach. No question of law arises, therefore this question does not require any further consideration.

Apart from involving a meager sum, the tribunal has directed disallowance of 10% against 20% of total expenses on account of telephone, vehicle etc. 3rd question is purely based on factual matrix. No question of law much-less substantial question of law arises in tax appeal.

Tax appeal is dismissed.