

## **Gross profit rate couldn't be computed with reference to returns of subsequent years: HC**

**Summary – The High Court of Jammu & Kashmir in a recent case of Nek Ram Sharma & Co., (the Assessee) held that Gross Profit rate could not be computed with reference to returns of subsequent assessment years**

### **Facts**

- The appellant, a partnership firm was constituted for the purpose of execution of purchase contract of bulk timber from Jammu and Kashmir Corporation. It entered into an agreement with the corporation.
- The appellant, for the relevant assessment year filed its income tax return disclosing the income of Rs.4 lakh. In the course of assessment proceedings, the revenue found that out of 539 bills produced by the appellant, under 40 bills, the appellant had made the same below the cost price and came to the conclusion that there was under billing. Thus, reference under section 144A was made to the Assistant Commissioner of Income-tax.
- The appellant revised the return of income under the Amnesty Scheme by disclosing additional sum of Rs.8 lakh. Thereupon, the revenue suggested additional of Rs.64 thousand by application of gross profit rate of 4.46 percent on the sales relating to the auction sales to which appellant agreed so that assessment was closed.
- However, the revenue continued the assessment and directed the appellant to furnish the address of the 28 parties. The revenue informed that out of 28 parties, 14 could not be traced out and the appellant was asked to furnish details of aforesaid 14 parties. The revenue calculated addition of Rs.28 lakh and sought approval from the assistant Commissioner for making the addition.
- The revenue passed an order of assessment by which income of the appellant was assessed at Rs.32 lakh.
- The Commissioner (Appeals) held that revenue had not brought on record any credible or convincing material to establish the case of under billing. Accordingly, an only addition of Rs.8 lakh was sustained and the balance addition of Rs.19 lakh was deleted.
- The Tribunal held that sales below cost price to unidentifiable parties would not amount the finding that sales were not verifiable. It was further held that it was a case where books of account were not prone to verification but application of reasonable and proper gross profit or net profit rate depending upon the facts and circumstances of the case and comparison with similar dealers. Accordingly, the order passed by the Commissioner (Appeals) was set aside and the matter was remitted to the Commissioner (Appeals) to explain the reasonableness of gross profit with positive evidence and not in generalist manner.
- The Commissioner (Appeals) by order dated 28-11-2003, applied the GP rate of 12.5 percent. Being aggrieved, the appellant referred an appeal before Tribunal. The tribunal by order dated 31-01-2006 reduced the GP rate from 12.5 percent to 10 percent.
- On appeal to the High Court:

#### Held

- The Tribunal while remitting the matter to the Commissioner (Appeals), *inter alia* held that "this is a case where books of account are not prone to verification but application of reasonable and proper gross profit or net profit rate depending upon the facts and circumstances of the case and comparison with similar dealers at Jammu. Therefore, this matter was to be referred back to the file of the Commissioner (Appeals) who will decide the proper gross profit rate to be applied after giving an opportunity of being heard to both the assessee as well as to the Assessing Officer. He will pass fresh order after deciding the issue of gross profit rate to be applied on the sale. The appellant can explain reasonableness of gross profit with positive evidence and not in generalistic manner."
- Thus, the burden of proof was on revenue to explain reasonableness of Gross profit with positive evidence and not in a generalistic manner. The aforesaid order was upheld by division bench of this court. Thus, the order passed by the Tribunal has attained finality and is binding on the parties. The only issue which survives for consideration is whether while applying the gross profit rate, the positive evidence has been led by the revenue or the same has been applied in a generalistic manner.
- The Commissioner (Appeals) that the returns of income of was informed relevant assessment year were not made available by the Central Record Room and returns for subsequent assessment year have been provided and the copies of the trading account of the parties were sent. Thus, it is evident that returns of income of assessment year 1986-87 were not available before the Commissioner (Appeals). However, the gross profit rate was computed with reference to the returns of the subsequent assessment years *i.e.* 1989-90 to 1991-92. Thus, there was no positive evidence before the Commissioner (Appeals) to assess the gross profit rate. The returns of the subsequent years *i.e.* 1989-90 to 1991-92 could not have been taken into account for computing the gross profit rate in respect of assessment year 1986-87. Thus, the finding with regard to gross profit rate is based on surmises and conjectures.
- In the result, the impugned order dated 28-11-2003 passed by the Commissioner (Appeals) and order dated 31-01-2006 passed by the Tribunal are hereby quashed.