

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY ,THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

INCOME TAX TRIBUNAL APPEAL NO: 195 OF 2007

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 10.01.2007 passed in I.T. (SS).A.No. 84/Hyd/03 (Block Period 1989-90 to 1999-2000) on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad preferred against the Order dated 31.03.2003 passed in Appeal No. 553/Tr/DCIT, KRM/CIT(A-III/02-03) on the file of the Commissioner of Income Tax (Appeals - III), Hyderabad preferred against the Order dated 30.05.2001 passed in PAN/GIR No. R-816 on the file of the Deputy Commissioner of Income Tax, Circle - 1, Karimnagar.

Between:

Konda Ramesh, 4-1-8/7, Osmanpura, Karimnagar

...Appellant

AND

Asst. Commissioner of Income-Tax, Circle-, Karimnagar.

...Respondent

Counsel for the Appellant : Mr. A.V.A. Siva Kartikeya

**Counsel for the Respondent : Mr. P. Murali Krishna,
Senior Standing Counsel for Income Tax**

The Court delivered the following: JUDGMENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

ITTA No. 195 of 2007

JUDGMENT: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. A.V.A. Siva Kartikeya, learned counsel appears for the appellant/assessee.

Mr. P. Murali Krishna, learned Senior Standing Counsel for Income-tax appears for the respondent/Revenue through video conferencing.

2. This appeal under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') is filed by the assessee and pertains to block period 1989-90 to 1999-2000. The appeal has been admitted on the following substantial question of law.

"Whether the Income-tax Appellate Tribunal committed an error of law in restoring the addition of Rs.1,50,303/- as interest received by the assessee without assigning any reasons and without any improving reasoning of the Commissioner of Income-tax (Appeals) in para 2.2 and para 2.3 of the order dated 31.03.2003?"

3. Facts giving rise to filing of this appeal briefly stated are that the assessee is the Managing Partner of M/s.Hanuman Parboiled Rice & Oil Mill, Karimnagar. A search and seizure operation under Section 132 of the Act was conducted on 09.03.1999 in the business and residential premises of the assessee. A survey operation under Section 133A of the Act was also conducted in the premises of Hanuman Parboiled Rice & Oil Mill and Nandini Traders of Hanuman Group. A notice under Section 158BC of the Act was issued to the assessee on 13.08.1999. It was served on him on 18.08.1999. The assessee thereupon filed the return of income for the block period 1989-90 to 1999-2000 on 28.09.1999 and disclosed his total income of Rs.2,56,770/-.

4. Thereafter, a notice under Section 143(2) of the Act was issued along with a detailed show cause notice dated 31.08.2000. The Assessing Officer by an order dated 30.05.2001 computed the income of the assessee under the Head of Interest and quantified the sum as Rs.1,50,303/-. The assessee was directed to pay the balance tax amount of Rs.2,34,509/-.

5. Being aggrieved, the assessee filed an appeal. The Commissioner of Income-tax (Appeals) by an order dated 31.03.2003 after taking into account the remand report received from the Assessing Officer, held that the assessee did not receive any interest during the block period. It was further held that the Assessing Officer ought not to have made the addition of a sum of Rs.1,50,303/- without making an enquiry whether the assessee had received the interest on the pro-notes found during the course of enquiry. It was further held that the assessee is not a company and therefore, the interest cannot be assessed on accrual basis.

6. Being aggrieved, the Revenue filed an appeal before the Income-tax Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal'). The Appellate Tribunal by an order dated 10.01.2007 *inter alia* held as follows:

"6. We have heard the learned Departmental Representative and perused the records of the Tribunal. We are of the considered opinion that the learned Commissioner of Income-tax (Appeals) was in error in deleting the above addition on the facts and circumstances narrated above. We, therefore, allow this ground of the Revenue and set aside the order of the learned Commissioner of Income-tax (Appeals) on this issue."

The Appeal preferred by the Revenue was partly allowed. Being Aggrieved, the assessee has filed this appeal.

7. Learned counsel for the assessee has invited the attention of this Court to the findings recorded in para 2.2 and para 2.3 of the order dated 31.03.2003 passed by the Commissioner of Income-tax (Appeals) and has submitted that the Commissioner of Income-tax (Appeals) by placing reliance on the remand report received from the Assessing Officer has rightly directed the deletion of a sum of Rs.1,50,303/-. It is contended that without assigning any reasons, the Appellate Tribunal has reversed the aforesaid finding.

8. On the other hand, learned counsel for the Revenue has supported the order passed by the Appellate Tribunal and has contended that the assessee follows the mercantile method of accounting. Therefore, the order passed by the Appellate Tribunal does not call for any interference.

9. We have considered the submissions made on both sides and have perused the record.

10. At this stage, it is apposite to take note of para 2.2 and para 2.3 of the order dated 31.03.2003 passed by the Commissioner of Income-tax (Appeals) which are extracted below for the facility of reference.

“2.2 Vide by my letter dt. 14-2-2003, I requested the AO to verify from the debtors whether they had paid any interest to the appellant and his family members. The AO, vide by his letters dt. 13-3-2003 & 25-3-2003, has informed that the debtors had told his Inspector, who went for enquiries, that they had not paid any interest during the block period.

2.3 I have carefully considered the submission. The AO has made this addition without making even basic enquiries. If promotes were seized during the course of search and if the AO wants to assess the interest on those promotes, the minimum enquiry that the AO has to make is to find out whether the debtors had paid the interest. The appellant is not a company where the interest can be assessed on accrual basis. The appellant is an individual and if an individual has not actually received the interest, there is no question of assessing the same. In these circumstances, I delete this addition of Rs.1,50,303/-.”

Thus, it is evident that the Commissioner of Income-tax (Appeals) on the basis of the remand report of the Assessing Officer has recorded a finding that the debtors had stated that they had not paid any interest to the assessee during the block period. It has further been held that since the assessee is not a Company, interest cannot be assessed on accrual basis. The

aforesaid finding of fact is recorded on the basis of material available on record. However, the aforesaid finding has been reversed by the Appellate Tribunal without assigning any reasons and without any improving reasoning on which the order of the Commissioner of Income-tax (Appeals) was based.

11. For the aforementioned reasons, substantial question of law framed by this Court is answered in favour of the assessee and against the Revenue.

12. In the result, the order dated 10.01.2007 passed by the Appellate Tribunal is set aside.

13. Accordingly, the appeal is allowed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

A.V.S.S.C.S.M. SARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.
2. The Commissioner of Income Tax (Appeals - III), Hyderabad.
3. The Deputy Commissioner of Income Tax, Circle-1, Karimnagar.
4. One CC to Mr. A.V.A. Siva Kartikeya, Advocate [OPUC]
5. One CC to Mr. P. Murali Krishna, Senior Standing Counsel for Income-Tax [OPUC]
6. Two CD Copies

Njb/gh

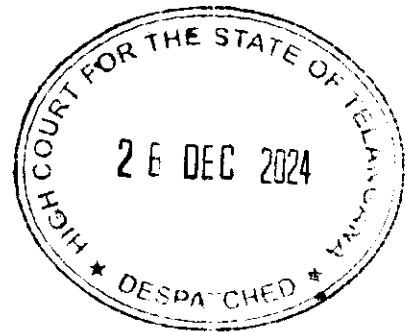


HIGH COURT

DATED:06/12/2024

JUDGMENT

ITTA.No.195 of 2007



**ALLOWING THE ITTA
WITHOUT COSTS**

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19/12/24
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