

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Income Tax Appeal No.278 of 2005 &
Income Tax Appeal No.79 of 2004**
Date of decision :April 17, 2012

The Commissioner of Income Tax

....Appellant

Versus

M/s Phool Singh Yadav & Co.,Gurgaon.

....Respondent

**CORAM : HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE ALOK SINGH**

1. Whether Reporters of local news papers may be allowed to see judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr.Rajesh Katoch, Advocate
for Mr.Tejiinder K.Joshi, Advocate
for the revenue-appellant.

Mr.Pankaj Jain, Advocate
for the respondent-assessee

Alok Singh, J.

Revenue has preferred present appeal under Section 260 A of the Income Tax Act, 1961 assailing the order dated 31.7.2002 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' New Delhi in ITA No.1439/Del/97 for the assessment year 1993-94 on the following substantial questions of law:-

- i) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in holding that the assessee could book its expenses on accrual basis and receipts on

actual receipt basis and not account for work-in-progress in the closing stock?

- ii) Whether the Hon'ble ITAT was right in law in deleting the addition of Rs.1,10,000/- and Rs.1,60,000/- made by the Assessing Officer and confirmed by the CIT(A) on account of investment made by the three partners with the assess firm?

Against the same judgment Assessee has also preferred appeal being I.T.A.No.238 of 2003 on the following substantial questions of law:-

- i) That whether under the facts and circumstances of the case the Tribunal was right in upholding the disallowance of Rs.6,48,770/- on account of the purchases of the material and Rs.75.000/- on account of the hire charges of the dumper/tractor which decision is against sections 28 and 29 and section 37(1) of the Income Tax Act, 1961.
- ii) That whether under the facts and circumstances of the case the inference drawn by the Tribunal about the genuiness of the transactions considering the totality of the circumstances is perverse and the order need to be quashed.
- iii) That whether the Tribunal was justified in giving a finding that sufficient opportunity was given to the appellant in the assessment proceedings and appellant proceedings and there was no violation of the principles of natural justice in upholding the necessary disallowance.

Brief facts inter-alia are that Assessee/partnership-firm was carrying on civil contracts viz laying roads; proper books of accounts,

vouchers and all the necessary records as were duly maintained and the same were produced before the learned Assessing Authority which were verified and audit report along with the audited balance sheet, profit and loss account etc.as required under the Act were also produced; no defects were ever found during the course of the examination of the books of accounts as maintained by the company and were never rejected; return was filed for an amount of Rs.1,03,980/-, the gross profit shown 13.25% was Rs.11,16,538/- being 13.25% on a total gross receipt of Rs.84,26,706/- against 12.39% on gross receipts of Rs.1,33,95,763/- in the previous assessment year. Learned Assessing Authority has held that purchase of alleged 'rori' (stone crushed) for an amount of Rs.6,48,770/- seems to be bogus on the ground that Rohtash Singh denied to have supplied any material or knowing Phool Singh Yadav & Co. The learned Assessing Authority had also made addition of Rs.75,000/- paid to one Mr.Surinder Kumar on account of hire charges of dumper/tractor for soil transportation and the expenditure incurred as mentioned was as per earlier years on the ground Surinder Kumar was never produced before the Assessing Authority despite of giving repeated opportunities. Learned CIT (A) as well as Tribunal upheld the finding of the Assessing Officer on these grounds.

We do not find any illegality or perversity in the observations made by all the three Authorities. Concurrent finding of facts recorded by all the three Authorities are based on logic and does not require interference, therefore, substantial questions of law as suggested by the assessee/appellant do not require any adjudication and stood answered by concurrent findings of fact.

The A.O and CIT (A) have observed that assessee has claimed expenses in the months of February and March, 1993 for which payment was shown having been received in the month of April, 1994, therefore, since payments were submitted in the months of February and March, 1993, hence, amount received against the bills submitted in February, March, 1993 should have been taken into account in the previous year for the reason that the appellant is not following mercantile system of accountancy. However, learned ITAT has observed that assessee has followed mercantile system of accountancy in regard to the expenditure incurred during that year and results were declared on actual receipt and this method is constantly followed by the assessee since last so many years, therefore, addition of the amount received in the next year in the month of April should not have been added in the previous year merely on the basis of bills issued and expenditure shown in the assessment year.

We do not find any illegality or jurisdictional error in the finding recorded by the Tribunal, therefore, questions of law no.(i) as suggested by the revenue stands answered against the revenue and in favour of the assessee.

Assessing Officer has noticed that two new partners were introduced in the assessment year and both of them invested Rs.50,000/- each as their capital and no evidence with regard to the source of funds in respect of these two partners were filed, therefore, A.O made an addition of amount of Rs.1,00,000/-, which was shown to have been invested by two partners Subhash Yadav and Mantra Yadav. Similarly another addition of Rs.1,60,000/- was made to the income on account of contribution made by

Sh.Phool Singh Yadav, another partner of the firm. The learned Tribunal has rightly observed that Sh.Subhash Yadav and Sh.Mantra Yadav are income tax assessee and copies of their returns of income were furnished during the assessment proceedings and similarly, Sh.Phool Singh Yadav another partner of the firm is also income tax assessee and his return was presented before the A.O, therefore, contribution made by the partners shown in their respective returns could not be said to be from unknown sources of income, therefore could not be added in the income of the assessee.

We do not find any illegality or perversity in the finding recorded by the learned Tribunal, therefore, substantial question of law no. (ii) as suggested by the appellant stands answered in favour of the assessee and against the revenue. Consequently, both the appeals stand disposed of.

Copy of this order be placed on the connected file.

**(M.M.Kumar)
Judge**

**(Alok Singh)
Judge**

**April 17 , 2012
BB**