

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

I.T.A. No. 80 of 2012

Date of decision: 13.02.2013.

The Commissioner of Income Tax -II, Amritsar

.... Appellant

Vs.

Vidya Sagar Saini

.... Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present: Mr. Denesh Goyal, Advocate for the appellant.

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HEMANT GUPTA, J. (ORAL)

The present petition has been filed under Section 260-A of the 1961 Act arises out of an order dated 13.12.2011 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short 'the Tribunal') pertaining to assessment year 2006-07. Revenue has claimed the following substantial question of law:

“Whether on the facts and circumstances of the case, Hon'ble ITAT Bench Amritsar was justified in law and on the facts in deciding the case in favour of assessee which is totally against the decision of Punjab & Haryana High Court in the case of M/s Parbhat Contractor, Sirsa, reported in ITR 293 of 2008 (323 ITR 675).”

The assessee is a civil contractor working primarily for the government department. During the course of assessment for the year in question, the learned Assessing Officer rejected the accounts book and

framed assessment by applying net profit at rate of 13%. However, the learned Commissioner of Income Tax (Appeals) has reduced the rate of net profit to 8%. Such finding has been affirmed by the Tribunal.

Learned counsel for the appellant relied upon the judgment of this Court reported as Commissioner of Income Tax Vs. Parbhat Kumar 323 ITR 675 and also a judgment of the Hon'ble Supreme Court reported as Kachwala Gems Vs. Joint Commissioner of Income Tax (2007) 288 ITR 10 to contend that the net rate of profit applied by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal is wholly arbitrary and without any justification.

Having heard learned counsel for the appellant, we do not find any merit in the argument raised. In Kachwala Gems case (supra), the Hon'ble Supreme Court observed that in best judgment assessment there is always a certain degree of guess work. No doubt, the authorities should try to make an honest and fair estimate of the income even in a best judgment and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment and it is assessee himself who is to blame as he did not submit proper account.

In the present case after rejecting the books of accounts, the Assessing Officer assessed the net profit at the rate of 13%, which the Commissioner of Income Tax (Appeals) reduced to 8%. Such rate of profit has been affirmed by the Tribunal. It would be a pure finding of fact that what should be net rate of profit from the work of a civil contract. In Parbhat Kumar's case (supra), it was the revenue appeal, which was dismissed holding that net profit rate in proceedings of best judgment

assessment after rejecting the account books would be question of fact when the findings recorded can be proved to be arbitrary and perverse. In the aforesaid case, 12% was applied as net profit rate in the case of civil contractor. We do not find that applying 8% as net profit rate is so arbitrary or perverse, so as to warrant any interference in the facts of the present case.

Consequently, we do not find that any substantial question of law arises for consideration in the present appeal. The same is accordingly dismissed.

**(HEMANT GUPTA)
JUDGE**

**(TEJINDER SINGH DHINDSA)
JUDGE**

February 13, 2013
harjeet/Vimal