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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

ITR No. 85 of 1999

DATE OF DECISION : April 30, 2007

Commissioner of Income-tax, Patiala

..... Petitioner

VERSUS

M/s Pran Nath Gupta (Pattan Works)  
SCO No. 1132-33/22B, Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE M.M KUMAR.  
HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Mr. Sanjiv Bansal, Advocate for the revenue  
Mr. S.K. Mukhi, Advocate with  
Mrs. Naveendir P.K. Singh, Advocate for the assessee.

RAJESH BINDAL, J.

The following question of law has been referred for opinion of this Court by the Income-Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, ( for short, 'the Tribunal') arising out of its order dated 11.10.96 passed in ITA No. 598/Chandi/91, for the assessment year 1989-90:-

“Whether on the facts and in the circumstances of the case, the ITAT was right in law in separately allowing depreciation on machinery when a lower net profit rate of 8% on contract receipts had been upheld and no account books have been maintained?”

Briefly the facts are that the assessee, who is a contractor, declared his income at Rs. 1,96,840/- against total receipts of Rs. 52,11,124/- declaring a net profit rate of 3.95%. As the books of account had not been maintained properly, by invoking provisions of Section 145(1) of the Income Tax Act, 1961 ( for short, ‘the Act’), gross profit rate of 10%

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was applied and even the claim of depreciation was also disallowed by the assessing officer. In appeal, the Commissioner of Income-Tax (Appeals) ( for short, 'the CIT(A)') estimated the net profit rate at the rate of 8% of gross receipts. The plea regarding deduction on account of depreciation was rejected. The Tribunal, while relying upon a Special Bench decision of the Tribunal, in Chopra brothers's case reported as **Chopra Bros. (India) Pvt. Ltd. Vs. Income-Tax Officer, Ward I, Yamuna Nagar (1993) 202 ITR 40 (A.T.)** and judgment of this Court in **Commissioner of Income-Tax Vs. Vinod Kumar Bhatia (1995) 211 ITR 253**, while upholding the application of net profit rate, held that the depreciation being a statutory deduction was allowable even if the net profit rate was applied.

It is not disputed before us by learned counsel for the parties that majority view of the Tribunal in Chopra brothers' case was upheld by this Court in **Commissioner of Income-Tax Vs. Chopra Bros. India ( P.) Ltd. (2001) 252 ITR 412** wherein it was held that for the period prior to April 1, 1994, where best judgment assessment is made by fixing a rate of net profit, the claim of the assessee for deduction on account of depreciation cannot be deemed to have been considered. It has to be separately taken into account, provided the prescribed particulars have been furnished by the assessee. The order passed in Chopra brothers' case by the Tribunal, which was relied upon for accepting the appeal of the assessee by the Tribunal having been upheld by this Court, we do not find any reason to take a view different than what has already been expressed by this Court.

Accordingly for the reasons stated by this Court in Chopra brothers' case (supra), the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(RAJESH BINDAL)  
JUDGE

(M.M. KUMAR)  
JUDGE

April 30, 2007  
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