
(2002) 07 DEL CK 0108

In the Delhi High Court

Case No : Income Tax A. No. 156 of 2002

Action Electricals

APPELLANT

Vs

Dy. Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Citation : (2002) 258 ITR 188

Hon'ble Judges : D.K. Jain, J

Bench : Division Bench

Advocate : Rajesh Aggarwal and Ms. Mridul Aggarwal, for the assessed None appeared, for the Revenue, for the Appellant;

Judgement

D.K. Jain, J.

This appeal by the assessed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order of the Income Tax Appellate Tribunal, Delhi Bench D, New Delhi (hereinafter referred to as "the Tribunal"), dated 18-10-2001, in I.T.A. No. 1305 (Delhi) of 1996 pertaining to the assessment year 1991-92.

2. Briefly stated the background facts giving rise to the present appeal are that during the course of search at the business and residential premises of the assessed on 28-11-1990, the assessed surrendered a sum of Rs. 5 lakhs u/s 132(4) of the Act as income for the year under consideration as per the following break up :

Rs.

"(a)

Cash accumulated from the transactions of business of Action Electricals. The said cash was found and seized during the course of search from residence.

2,00,000

(b)

Amount outstanding from parties and since received back after search

2,00,000

(c)

Investments in household goods like VCR, TV, fridge, furniture, AC, etc., kept and found at the residence of the partners Shri Sanjay Gupta and Smt. Sunil Gupta, wife of Sh. Sunil Gupta, at B-5, C.C. Colony, Delhi

1,00,000

5,00,000"

The said amount was credited to the profit and loss account and a total income of Rs. 3,80,760 was returned for the assessment year 1991-92.

3. During the course of assessment proceedings for the relevant assessment year (previous year comprising of 6-1/2 months, i.e., up to 15-10-1990), the assessing officer, invoking a proviso to section 145(1) of the Act, rejected the books of account maintained by the assessed and estimated the turnover of the assessed-firm at Rs. 40 lakhs as against Rs. 38,76,081 declared by the assessed. Applying a gross profit rate of 13.36 per cent, the rate declared by the assessed in the immediately preceding assessment year, the assessing officer made an addition of Rs. 3,45,180, as extra profits, to the declared income of the assessed.

4. The assessed took the matter in appeal to the Commissioner (Appeals), who, while upholding the action of the assessing officer in taking recourse to the provisions of section 145 of the Act and rejecting the book results, reduced the said addition of Rs. 1,35,000. Still aggrieved, the assessed took the matter in further appeal to the Tribunal. The Tribunal by the impugned order while allowing the appeal partly sustained the trading addition of Rs. 1,20,000 deleted the balance addition of Rs. 15,000 by observing thus :

"In the present case it may be true that some of the aspects raised by the assessing officer have been found untenable by the learned Commissioner (Appeals) but this is not the position in respect of at least one of the points. The fact that remains is that during the course of search some unaccounted sales were detected and those were admitted by the assessed. Therefore, by any standards it could not be said that the accounts maintained by the assessed were correct or complete. However, this aspect is not considered to be of much consequence inasmuch as addition to the tune of Rs. 1,20,000 has been upheld for different reasons and it is only an addition of Rs. 15,000, which is sustained by the learned Commissioner (Appeals) on account of rejection of account books. Thus the significant aspect is whether addition of Rs. 1,20,000 was called for. In this connection, we would like to repeat that a surrender of Rs. 5,00,000 was made by the assessed during the course of search conducted on 28-11-1990, after the close of the assessed previous year. This surrender was on account of

cash found during the course of search, sundry debtors which were not included in the account books and investments made in household goods. By crediting an amount of Rs. 5,00,000 to the profit and loss account, the assessed has reduced the amount of surrender which could not be possibly done, the assets being definite assets which came to light after the close of the assessed accounting year. The learned Commissioner (Appeals) has rightly pointed out that this was a device adopted by the assessed to reduce the income surrendered by it. In our considered opinion, in the circumstances of the case, reduction of the surrendered income was not permissible either from the accountancy point of view or in law. We are, Therefore, in full agreement with the conclusion arrived at by the learned Commissioner (Appeals) in that behalf and do not find any infirmity in so far as the sustenance of addition to the tune of Rs. 1,20,000 is concerned. The balance addition of Rs. 15,000 is, however, uncalled for. It is ordered to be deleted."

Hence the present appeal.

5. We have heard Mr. Rajesh Aggarwal, learned counsel for the assessed. It is vehemently submitted by learned counsel that the Tribunal has failed to appreciate that except for the surrender made by the assessed at the time of search, there was no other material before the assessing officer to come to the conclusion that the books of account maintained by the assessed were not correct or complete, attracting the provisions of section 145(2) of the Act, as it existed at the relevant time. It is also urged that the estimation of the sales and enhancement in the gross profit rate is without any basis.

6. We are unable to persuade ourselves to agree with learned counsel for the assessed. Section 145(2) of the Act empowers the assessing officer to make a best judgment assessment when he is not satisfied about the correctness or completeness of the accounts of the assessed. It is not possible to categorise various types of defects which may render rejection of books of account of an assessed on the ground that the accounts are not complete or correct. Each case has to be considered on its own peculiar facts, having regard to the nature of business. Though it is true that the absence of stock register, in a given situation, may not per se lead to an inference that the accounts are incomplete or false the absence of such a register, coupled with other factor, like fall in profits, etc., may lead to an inference that the accounts are not correct. As noticed above, in the instant case, non-maintenance of stock register, coupled with the fact that unaccounted sales were detected during the course of search, in our opinion, is a relevant factor to sustain the view of the assessing officer. We do not find any legal infirmity in the view taken by the Tribunal that the disclosures/surrender of Rs. 5 lakhs by the assessed at the time of search, as its unaccounted sales, constitutes sufficient material for the assessing officer to base his satisfaction that the books of account of the assessed are not correct and complete. In so far as the estimation of the sales/gross profit rate is concerned, it being a best judgment assessment, based on past years results cannot be said to be arbitrary.

7. On the findings of fact recorded by the Tribunal, in our opinion, no question of law much less a substantial question of law arises. The appeal, being devoid of merit is dismissed.

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