(2006) 09 P&H CK 0244

In the Punjab And Haryana At Chandigarh

Bajaj Steel Traders APPELLANT

Vs

Income Tax Appellate Tribunal RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:
Income Tax Act, 1961 — Section 145, 254

Citation : (2008) 303 ITR 448

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee against the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in M.A. No. 79(ASR)/1999 in ITA No. 139 (ASR)/1992, dated 18-11-1999 for the assessment year 1990-91, proposing following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar was justified in assessing the additions made by the lower authorities by invoking the provisions of proviso to Section 145(1) of the Income Tax Act, on the wrong assumption that the stock register was not produced by the assessee before the assessing officer after working out day-to-day opening and closing stocks?

(ii) Whether in the facts and circumstances of the case, the learned Tribunal was right in law while rejecting the rectification applica-tion filed by the assessee u/s 254(2) in the Income Tax Act vide Annexure A/6?

(iii) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar was justified in invoking the provisions to Section 145(1) of the Income Tax Act against the assessee for applying a gross profit rate?

(iv) Whether in the facts and circumstances of the case, the Income Tax

Appellate Tribunal, Amritsar Bench, Amritsar was justified in relying upon the points against the assessee, which was decided by the Commissioner (Appeals) in favour of the assessee and against which no appeal was carried out by the revenue?

2. The assessee filed his return for the assessment year 1990-91. During the assessment, the assessing officer noticed that day-to-day opening of stocks as well as closing stock had not been worked out there was difference in the stock inventory figures as well as figures shown in the stock register; the assessee had sold certain items at rates lesser than the purchase price on same day.

3. The assessing officer, accordingly, proceeded to make estimate of sales at Rs. 35 lakhs as against sales shown at Rs. 33,89,397. The Assessing Officer applied the GP rate of 8.5 per cent as against 6.99 per cent declared by the assessee, considering the GP rate declared by the assessee during previous years. The assessing officer made certain additions. On appeal, the assessee has been given partial relief.

4. Only contention raised by the learned Counsel for the assessee is that invocation of proviso to Section 145(1) of the Income Tax Act, 1961 (hereinafter referred to as'' the Act'') by the assessing officer was not justified, as method of accounting employed by the assessee has not been found to be wrong, which is the only ground for invoking the said proviso. Reliance was placed on judgment of the Rajasthan High Court. in Commissioner of Income Tax Vs. Thakurmal Bajranglal, wherein it was observed:

The contention of learned Counsel for the revenue is that the powers exercised by the Income Tax Officer are under Sub-section (2) of Section 145 and not under the proviso to Sub-section (1) thereof. He argued that the Tribunal overlooked this aspect and, theref ore, the conclusion reached by it is not justified. In other words, no attempt is made on behalf of the revenue to rely on the proviso to Sub-section (1) of Section 145 of the Act, the only argument being based on the applicability of Sub-section (2) of Section 145. In such a situation, no occasion arises for deciding the justification of the applicability of the proviso to Sub-section (1) of Section 145 and the only question is whether Sub-section (2) of Section 145 is attracted. We find that the Tribunal has not taken into account Sub-section (2) of Section 145 for deciding the appeal bef ore it and the same has been decided only on the question of applicability of the proviso to Sub-section (1) of Section 145 on which the revenue does not even rely.

5. We are unable to accept the submission made. Proviso to Section 145(1) of the Act can be invoked not only where method employed is not properbut also where accounts are not correct and complete. In any case, u/s 145(2) of the Act, the assessing officer can make best judgment assessment if the accounts are not correct or complete. The view taken is not liable to be interfered with unless the finding recorded by the authority that accounts of the assessee were not complete or correct, is shown to be perverse. Judgment relied an also does not

help the assessee, as therein also, the assessment was not interferred with even after holding that proviso to Section 145(1) of the Act was not attracted.

6. The question raised cannot, thus, be held to be substantial question of law.

7. The appeal is dismissed.

