(2008) 05 RAJ CK 0159

In the Rajasthan High Court

Banarsilal Malhotra and Sons APPELLANT

Vs

ITO RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:
Income Tax Act, 1961 — Section 143(2)

Citation : (2008) 05 RAJ CK 0159

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal has been filed by the assessee against the judgment of the learned Tribunal dt. 24-9-2004, passed in Appeal No. 357/1999.

2. The appeal was admitted on 2-1-2006, by framing following substantial question of law:

In the facts and circumstances of the case, whether the Tribunal could reasonably come to the conclusion that purchases and sales of goods in arhat for the four parties referred to in the order of the Tribunal were benami transactions, merely because sister of one of the partners of the assessee firm was married to one of the partners of another firm when all the parties on whose behalf transactions have been carried out are assessed to tax and these transactions have been accepted and usual charges like as interest, mujduri, commission, godown rent etc. had been charged from the parties in question?

3. The necessary facts are, that the appellant assessee was served with a notice u/s 143(2), in response whereto the assessee produced books of accounts etc., which were examined by way of test check, and it was found, that four transactions of purchase/sale were shown, only for the purpose of diverting a total profit of Rs. 1,94,210 to these concerns, and it was admitted by Anil Kumar, that the four concerns are closely related to the partners of the assessee firm, as one of the partners of these firms is married to his sister, and that from the date

of purchase and delivery, the date of sale, the goods shown to have been purchased/sold on behalf of these firms remained in possession of the assessee firm. Various other circumstances were also considered by the Assessing Officer in regard to various transactions of the four firms, showing as to how the loss was shown to have been suffered by the concerned firm, and thus profit of the assessee firm was diverted. Accordingly, the Assessing Officer has made addition about the profit diverted.

4. Against this order the assessee filed appeal before the learned Commissioner, challenging the addition made on account of the profits earned by the Aarhatiya parties. The learned Commissioner found, after re-examining the books of accounts, and reappreciating the statement, and totality of attending circumstances, that the addition was rightly made, and it was sustained. The learned Commissioner also considered the aspect about all the four parties being regular dealers, and assessees of Income Tax, and having shown the loss incurred to these transactions in the Income tax returns, which returns have been accepted by the concerned Assessing Officer. After noticing these contentions, the learned Commissioner had examined the transactions, and found them to be Benami.

5. The assessee filed further appeal before the learned Tribunal, and the learned Tribunal found, that it is obvious, that all the bills of purchase and sales were issued in the name of the assessee itself, and were not issued in the name of respective parties. Likewise, in none of the cases the entire amount was received either in advance, or immediately after purchase, rather whatever little amount was received, was returned to the parties, before realising the sale proceeds. Then, it was found that there is also no dispute about the fact that right from purchase till sale the goods remained in the custody of the assessee, as admitted by Mr. Anil Kumar the partner, and that, the four firms are closely related to the assessee. Then, it has been considered that if the assessee were to act as an agent of the aforesaid parties, the amounts should have been received well in advance, to make payment to the parry from whom the merchandise was purchased, but the details placed on record shows, that there is no material or evidence to show, that whatever little amounts were received, these were advances against the purchase of merchandise. Inter alia appreciating all these aspects, the learned Tribunal upheld the orders of the authorities below, and dismissed the appeal.

6. In our view, all said and done, the question as to whether transactions were Benami, or not, is primarily a question of fact, and findings in this regard have been arrived at concurrently by all the three authorities below, by appreciating the relevant attending circumstances available on record, based on the material, including material admissions on the part of the assessee.

7. The question as framed comprehends, as if the learned Tribunal has found the transactions Benami, merely because sister of one of the partners of the assessee firm was married to one of the partners of the other firm, when all the

parties on whose behalf the transactions were carried out are assessed to tax, and these transactions have been accepted. In our view, from a look at the orders of the three authorities below, it is clear, that the findings are not arrived at, merely on the basis of the fact, that sister of one of the partners of the assessee firm was married to one of the partners of the other firm. Apart from this, many other relevant considerations have also been taken into account by the learned authorities below, which quite clearly indicate, that activity of the appellant assessee, to be of diverting the profits to those four firms, which were shown to have suffered losses. May be, that those transactions may have been accepted in the assessment of those concerns, but then, that is hardly of any consequence. So far as the assessee is concerned, it is clearly found to have diverted the profits.

8. Thus, in our view, the findings arrived at by the learned authorities below, are brass finding of fact, and are not based, merely on the basis, that sister of one of the partners of the assessee firm was married to one of the partners of the other firm, rather they have been arrived at after appreciating entire material on record, and considering all attending circumstances. Therefore, in our view, substantial question of law as framed does not arise in the appeal.

9. Accordingly, the question is answered as above, and the appeal is dismissed.

