
(1984) 05 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 94 of 1977

Basanta Mal Tilak Ram

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-05-1984

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1985) 154 ITR 300

Hon'ble Judges : Surinder Singh, J; D.S. Tewatia, J

Bench : Division Bench

Advocate : R.C. Seitia, for the Appellant; Ashok Bhan, Senior Advocate and Ajay Kumar Mittal, for the Respondent

Judgement

Surinder Singh, J.—The facts giving rise to the present petition u/s 256(2) of the I.T. Act, 1961, have been noticed in detail in the impugned order of the Income Tax Appellate Tribunal, dated March 4, 1976. However, the same may be briefly noticed.

2. The petitioner (hereinafter referred to as "the assessee") is a registered firm carrying on business in foodgrains and other items including cast iron scrap. For the assessment year 1968-69, the assessee filed its return of income declaring a business income at Rs. 13,413 and speculation loss at Rs. 2,264. The assessee had claimed a loss of Rs. 25,684 in groundnut oil in consequence of three transactions. The assessee had claimed that the loss aforesaid was in ready transactions. The contention was, however, not accepted by the Revenue because of three reasons, firstly, the purchases and sales were on the same day and, secondly, there was no evidence to show that the transactions were entered in advance. The third reason taken into consideration was that the assessee had failed to prove that actual delivery of the goods in question was taken. The claimed loss of Rs. 25,684 was, therefore, disallowed as speculation loss. There were certain other transactions connected with the assessment case but the same are not material for the purpose of the present case. The total income of

the assessee was computed at Rs. 69,700 as rounded off.

3. The assessee filed an appeal before the AAC but his contention about the adjustment of Rs. 25,684 as loss was declined. The assessee, thereafter, took the matter to the Appellate Tribunal with a prayer for making a reference to this court on the following proposed questions :

"1. Whether, on the facts and in the circumstances of the case, the loss of Rs. 25,684 suffered by the assessee in the groundnut oil account was not a "business loss" allowable as a deduction and set off against the other business profits of the assessee and not a loss in speculative transaction?

(2) Whether, on the facts and in the circumstances of the case, the addition of Rs. 30,000 as the income of the assessee from undisclosed sources for the assessment year 1968-69 is valid and warranted in law ?

(3) Whether there was any legal evidence to justify the Tribunal's finding that the loans of Rs. 30,000 raised by the assessee for its business were the assessee's income for the assessment year 1968-69 ?"

4. The Tribunal held that the settlement of the transactions in question took place without actual delivery and, hence, no referable question of law arose. The present application has been filed in this court for issue of a mandamus to the Tribunal to draw up a statement of case and refer the abovementioned question of law for consideration.

5. After hearing the learned counsel for the parties, we find that the impugned order passed by the Tribunal is absolutely legal and correct and calls for no interference. Before the Tribunal, the learned counsel for the assessee sought to place reliance upon certain observations made in Raghunath Prasad Poddar, etc. Vs. Commissioner of Income Tax, Calcutta, , to urge that the loss in the present case should be allowed as a business loss. The Tribunal noticed the facts of the said case and found the same distinguishable from those in the present case. In the case in hand, there were no pucca delivery orders involved. The Tribunal also found that the assessee had not produced any evidence to show that the railway receipts came into their possession after making the payment for the purchase or that the railway receipts were transferred after receiving the sale price of the goods. In another part of its judgment, the Tribunal also noted that the contention of the assessee that the onus placed upon them had been discharged on the basis of hundis discharged by Shri Ranjit Singh was wrong, as Shri Ranjit Singh had never produced his books of account in support of the fact that the money shown in the hundis as having been lent by him had actually existed with him and was duly recorded in his books of account. A finding of fact was, therefore, arrived at that the discharge of the hundis did not prove that the money was actually advanced by the creditor to the assessee. On the other hand, there was an admission made by Shri Ranjit Singh aforesaid in his statement, dated November 19, 1971, that he gave a discharge of these two hundis as was the practice in the case of all bogus hundi transactions. The

second piece of evidence relied upon by the assessee is the certificates issued by Shri Ranjit Singh which was also found to be unreliable and unacceptable as the relevant account books to which the certificates pertained were never produced. In conclusion, the Tribunal recorded a finding that the transactions in question took place without actual delivery.

6. The question mooted before it being purely a question of fact, the Tribunal held that there was no question of law which was required to be referred to this court. We are fully in agreement with the reasoning and conclusion of the Tribunal in this behalf. The reference is, therefore, answered accordingly, i. e., against the assessee and in favour of the Revenue.

D.S. Tewatia, J.

7. I agree.