
(1980) 07 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 100 of 1975

Batala Timber House

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 263

Citation : (1981) 128 ITR 395 : (1981) 5 TAXMAN 222

Hon'ble Judges : M.R. Sharma, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : H.L. Sibal and R.C. Setia, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—The following question of law has been referred to this court for its opinion at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 ?"

2. The brief facts giving rise to this reference are that the assessee claimed a loss of stock of Rs. 70,000, which was allegedly destroyed in fire which took place on the night between 30/31st March, 1968. This was claimed for the assessment year 1968-69, relevant to the accounting period ending March 31, 1968. In this fire, besides the damage to the building, the assessee suffered a loss of stock-in-trade. Since the building and the stock-in-trade stood insured with the Oriental Fire and General Insurance Co. Ltd., New Delhi, the assessee claimed compensation for the loss suffered by it in the aforementioned fire, from the insurance company. The insurance company entrusted the case to the surveyors and assessors for the purpose of assessing the correct figure of loss for compensation purposes. The assessors, vide their report dated June 22, 1968, assessed the value of loss to the stock-in-trade at Rs. 39,449. The relevant portion of the report of the surveyors & assessors is as follows:

To cost of goods as per list drawn from salvage as per details given in the enclosed statement:

Rs. 55,364

Less deduction @ 5% being allowance for old and/or shop soiled and/or damaged goods.

2,768

52,596

Rs.

B/F

52,596

Less value of salvage @ 25% as agreed upon by insured with great difficulty after lengthy discussion and persuasion

13,149

39,447

or say

39,445

3. Thus, according to the report of the surveyors and assessors, loss of stock-in-trade was to the tune of Rs. 39,445 which the assessee received from the insurance company on October 17, 1968.

4. The ITO, while computing the total income of the assessee for the relevant assessment year, allowed deduction of Rs. 30,555 on account of loss of stock-in-trade which was determined as under:

Rs.

Total loss claimed by the assessee

Less loss assessed and received from the insurance company

70,000

39,445

30,555

5. The assessment was completed by the ITO on a total income of Rs. 51,320, vide his order dated December 14, 1971.

6. After the completion of the assessment, the Commissioner examined the records of the assessee and found that the assessment framed by the ITO was erroneous and prejudicial to the interests of the revenue, inasmuch as the loss of

Rs. 30,555 was wrongly allowed to the assessee as against the allowable loss of Rs. 2,768. The Commissioner, after issuing notice and hearing the assessee by his order u/s 263 of the I.T. Act, 1961 (hereinafter called "the Act"), dated December 5, 1973, withdrew the extra loss of Rs. 27,787 allowed to the assessee by the ITO.

7. Aggrieved by the order of the Commissioner, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter called "the Tribunal"). The Tribunal, after going through the records and hearing the parties, held that the order of the ITO accepting the claim of loss of Rs. 70,000 was erroneous and consequently prejudicial to the interests of the revenue and hence the Commissioner was perfectly justified in withdrawing the excess loss allowed to the assessee. The Tribunal observed as follows:

"5. We have heard the learned representatives of the parties and have gone through the records, and, in our opinion, the order of the Commissioner of Income Tax is quite sound and does not call for any interference. We find from the records that, according to the assessee, the stock of goods before the fire was worth Rs. 89,000 out of which stock worth Rs. 70,000 was destroyed in fire. The assessee does not maintain any stock register, as found by the assessors of the insurance company and, in these circumstances, the figure of closing stock as furnished by the assessee is not supported by any concrete evidence. As against the above, the surveyors and assessors of the insurance company have investigated in great detail the value of the closing stock held by the assessee before the fire and the value of the stock destroyed in the fire. We find from the report of the assessors that the position of loss was discussed by the surveyors with the assessee over a number of meetings spread over ten days at Batala and Delhi and it was after these meetings and discussions that a loss of Rs. 39,445 was determined to which the assessee agreed. We are, therefore, of the opinion that in the face of the concrete evidence placed by the insurance company determining the loss of stock destroyed in fire at Rs. 39,445, the figure of loss claimed by the assessee at Rs. 70,000 is not supported by any evidence or material on record. The order of the Income Tax Officer accepting the claim of loss at Rs. 70,000 was, therefore, definitely erroneous and consequently prejudicial to the interests of the revenue and the Commissioner of Income Tax was perfectly justified in withdrawing the excessive loss allowed to the assessee. Accordingly, we uphold the finding of the Commissioner of Income Tax and reject the contention of the assessee."

8. After hearing the learned counsel for the parties, we are of the opinion that the question of law referred to us has to be answered in the affirmative, i.e., against the assessee and in favour of the revenue. The contention of Mr. H. L. Sibal, learned counsel for the assessee, that the Tribunal has refused to look to the evidence produced by the assessee to prove the loss, is without any merit. There is no merit in the contention that the Tribunal erred in law as it failed to consider the other relevant material, except the fact that the assessee had

accepted a loss of Rs. 39,445 as damages from the insurance company. We have carefully gone through the order of the Tribunal, the relevant portion of which has already been reproduced in the earlier part of the judgment, and we find that the Tribunal did take into consideration all the material produced before it and for good reasons rejected the records of the assessee, on the basis of which the loss was being claimed. The Tribunal rightly placed reliance on the admitted fact that the assessee had agreed and accepted the compensation for the loss to the tune of Rs. 39,445 only from the insurance company. Nothing could be pointed out by Mr. Sibal, learned counsel for the assessee, to show that any error of law was committed by the Tribunal in appreciating the evidence led before it. No other argument has been raised.

9. For the reasons recorded above, we answer the question accordingly with costs.