
(2006) 10 AHC CK 0053
In the Allahabad High Court

Bimal Kumar Anant Kumar

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 144, 145, 246, 256, 44AA

Citation : (2007) 210 CTR 171 : (2007) 288 ITR 278

Hon'ble Judges : Vikram Nath, J; R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified that the production of stock register at the time of hearing of appeal constituted an additional evidence ?
- 2 Whether on the facts and in the circumstances of the case, the Tribunal was legally justified to sustain the ad hoc addition of Rs. 13,000/- in the trading account without recording a finding of rejection of books of account?
2. The reference relates to the Assessment Year 1 982-83.
3. Briefly stated, the facts giving rise to the present reference are as follow:

The assessee is a registered firm and carried on the business of sale of tin sheets only for the assessment year as alleged by it. It disclosed a returned income of Rs. 38,601/-. The gross profit shown was 4,2%. The Income Tax Officer while framing the assessment order considered the gross profit rate as low and on the basis of a comparable case of M/s United Trading Company as mentioned in the assessment order and also on the ground that no stock register was maintained, made an ad hoc addition of Rs. 15,000/- in the trading account and further made a disallowance of Rs. 2,000/- out of travelling expenses and Rs. 1,000/- out of

other expenses. The assessee, being aggrieved, filed appeal before the Appellate Assistant Commissioner, Lucknow. The Appellate Assistant Commissioner sustained the addition of Rs. 15,000/- and also other disallowances and dismissed the appeal. The assessee, being aggrieved, preferred appeal before the Tribunal. The Tribunal reduced the addition of Rs. 15,000/- to Rs. 13,000/- and sustained the disallowance of Rs. 2,000/- out of travelling expenses on account of personal expenses and deleted the disallowance of Rs. 1,000/- towards other miscellaneous expenses.

4. We have heard Sri Pawansri Agrawal, learned Counsel for the applicant, and Sri Shambhoo Chopra, learned Standing Counsel appearing for the Revenue.

5. The learned Counsel for the applicant submitted that the Income Tax Officer without pointing out any defect in the account books or in the method of accounting, had proceeded to determine the income by best judgment, which is not permissible under law. According to him, the books of account has been accepted by the Sales Tax Department where the stock register was also produced and signed by the Sales Tax Officer and, therefore, no adverse interference should have been drawn by the Income Tax Officer from the mere fact that the stock register was not produced before him. He further submitted that the Assessing Authority had erred in applying the comparable cases for holding that the gross profit rate disclosed by the applicant is very low and making an ad hoc addition of Rs. 15,000/- which has been subsequently reduced to Rs. 13,000/- by the Tribunal, in the trading result. He further submitted that the stock register was produced before the Tribunal which ought to have been taken into consideration. In support of his various pleas, he has relied upon the following decisions:

(i) Pandit Bros. Vs. Commr. of Income Tax,

(ii) S. Veeraiah Reddiar Vs. Commissioner of Income Tax, Travancore-Cochin, Bangalore,

(iii) Ashoke Refractories (P) Ltd. Vs. Commissioner of Income Tax, and

(iv) The Commissioner of Income Tax Vs. Rajni Kant Dave,

6. Sri Shambhoo Chopra, learned Standing Counsel, on the other hand, submitted that as the applicant had not produced the stock register, the stock position was not known and, therefore, the trading result could not be verified. According to him, on these facts and circumstances, the Income Tax Officer was fully justified in applying comparable cases and making ad hoc addition of Rs. 15,000/- which has been subsequently reduced by the Tribunal to Rs. 13,000/-. He further submitted that the Tribunal had rightly declined to permit the applicant to produce the stock register before it as it was an additional piece of evidence which was not filed or produced alongwith a proper application under Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963.

7. We have given our anxious consideration to the various pleas raised by the

learned Counsel for the parties.

8. We find that it is not in dispute that the applicant firm which has been newly constituted, carried on the business of sale and purchase of tin sheets. It had not produced the stock register before the Income Tax Officer. An inference was drawn by the Assessing Authority that no stock register had been maintained. Under such circumstances, an ad hoc addition of Rs. 15,000/- was added to the trading result after comparing the gross profit rate of 4.2% disclosed by the applicant with that of 6 to 7 % disclosed by the United Trading Company. It is also not in dispute that the applicant had surrendered a sum of Rs. 30,000/- as cash credit which it had deposited in the name of M/s Vijay Tin Works in its books of account. u/s 145 of the Act, as it stood during the relevant period, the Income Tax Officer had the power to make an assessment upon such basis and in such manner as he may determine where the accounts are correct and complete but the method employed is such that in his opinion the income cannot be properly deduced therefrom or where he is not satisfied about the correctness or completeness of the account of the assessee, he may make an assessment in the manner provided u/s 144 of the Act. For ready reference, Section 145 of the Act, as it stood during the relevant period, is reproduced below:

145. Method of accounting.

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with method of accounting regularly employed by the assessee:

Provided that in any case where the accounts are correct and complete to the satisfaction of the Income Tax Officer but the method employed is that that, in the opinion of the Income Tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income Tax Officer may determine.

(2) Where the Income Tax Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income Tax Officer may make an assessment in the manner provided in Section 144.

9. From a reading of the aforesaid provision, we find that under the proviso to Sub-section (1) of Section 145 of the Act, the Income Tax Officer can compute the income in his own way where he is of the opinion that the income cannot properly be deduced from the books of account even though the accounts are correct and complete. Under Sub-section (2), the Income Tax Officer has been empowered to make an assessment to the best of his judgment as provided u/s 144 where he is not satisfied about the correctness or completeness of the accounts or where no method of accounting has been regularly employed. In the present case, we find that admittedly the applicant had not produced the stock register before the Assessing Authority in the absence of which the stock position remained unverified. The gross profit declared by the applicant was too low as

compared to other assesseees dealing in the same trade and, therefore, it would be taken that he was of the opinion that the income cannot be properly deduced: He was therefore justified in drawing a comparison from the gross profit rate disclosed by other assesseees dealing in the same trade and making ad hoc addition of Rs. 15,000/- in the trading result, later on reduced to Rs. 13,000/- by the Tribunal.

10. In the case of Pandit Bros. (supra) the Punjab High Court has held that the fact that the profits are low is merely a warning to him to look into the accounts more carefully and to see that there is material to lead him to the conclusion that there is something false in the account books. The mere fact that the profits are low is not material upon which a finding u/s 13 can be based, because the assessee may be incompetent or his methods of business may be uneconomic. Again, the fact that there is no stock register only cautions him against the falsity of the returns made by the assessee. He cannot say that merely because there is no stock register the account books must be false. In the aforesaid case, the accounts book were accepted by the Assessing Authority as correct and disclosing a true state of affairs which is not the case at hand and, therefore, no advantage can be drawn by the applicant from the aforesaid decision.

11. In the case of S. Veeriah Reddiar (supra) the Kerala High Court has followed the decision of the Punjab High Court in the case of Pandit Bros. (supra) and has held that the absence of any register or regular stock register were not sufficient reason or material on the strength of which the account of the assessee could be rejected under the proviso to Section 13 of the Indian Income Tax Act, 1922. In the aforesaid case, the Income Tax Officer had conceded before the Appellate Assistant Commissioner at the time of the hearing of the appeal that the assessee's inventory of the closing stock was not inaccurate and that the criticisms in his own order against the assessee's accounts were wrong which was not suggested to be unfounded. It had further held that if the stock inventory was not incomplete and inaccurate, why it was not sufficient, and how the stock register was necessary in its place, for computing the profit of the business and when there is no dispute as to the opening stock, the purchases and the sales, all that is necessary for computing the profit is only information about the quantity and value of the closing stock which was easily available from the stock inventory, and the correctness of the inventory could have been easily checked with the help of the records relating to the opening stock and the purchases and sales. The aforesaid decision turns on its own peculiar fact which do not exist in the present case.

12. In the case of Ashoke Refractories P. Ltd. (supra) the Calcutta High Court has held as follows:

In the present case, the question is as to whether the books of account could be rejected only in the absence of stock register so far as the assessment year 1990-91 is concerned and on the grounds that the item-wise stocks were not maintained in the stock register could be a ground sufficient to reject the books

of account for the assessment year 1991-92 without any finding that the accounts were incomplete or were incorrect or that though the accounts were complete and correct, the methods applied were such that the income could not be deduced. Without a finding or forming an opinion to the extent indicated in expressed terms in the section itself, the books of account cannot be rejected, merely on the absence of stock register or failure to maintain item-wise stock in the stock register when there were other materials available from which income could be deduced. In a case where the books of account are so rejected without the ingredients of Section 145 being fulfilled, such rejection is perverse and void

13. In the case of Rajni Kant Dave (supra) this Court has held that if an assessee has maintained the accounts book prescribed by Rule 6-F of the Income Tax Rules, 1962 and Section 44AA of the Act, unless any defect is pointed out in the maintenance of such books, merely because the Assessing Authority desires some other accounts book to be maintained over and above what was required by Rule 6-F of the Rules, recourse to the provisions of Sub-section (1) of Section 145 of the Act could not be taken. The aforesaid decision is of no help to the applicant as, in the present case, we find that the applicant had not maintained the stock register which he was otherwise required to be maintained. It is to be remembered that the stock register is required to be maintained by an assessee in order to enable the Assessing Authority to verify the stocks and to arrive at a conclusion as to whether the trading result disclosed by the assessee is correct or not. In the absence of any such register having been maintained or produced before the Assessing Authority, an inference can be drawn that the account books do not disclose the correct picture of the trading result.

14. In the case of Awadhesh Pratap Singh Abdul Rehman and Brothers Vs. Commissioner of Income Tax, , this Court has held that it is true that the absence of the stock register and cash memo in a given situation may not per se lead to an inference that the accounts are false or incomplete. However, where the absence of a stock register, cash memos, etc., is coupled with other factors, like vouchers in support of the expenses and purchases made not being forthcoming and the profits being low, may give rise to a legitimate inference that all is not well with the books and the same cannot be relied upon to assess the income, profits or gains of an assessee.

15. In the present case, we find that apart from the fact that the stock register was not produced by the applicant, the profits were also low as compared to other assesseees dealing in the same trade coupled with the fact that the applicant had voluntarily surrendered a sum of Rs. 30,000/-appearing as deposit in the name of M/s Vijay Tin Works in its books of account as it was not in a position to explain the same and, therefore, the trading result disclosed by the applicant had rightly not been accepted. The decision of the Calcutta High Court in the case of Ashoke Refractories P. Ltd. (supra), in view of the special facts of this case, would not be applicable in the present case.

16. In Income Tax Reference No. 85 of 1984, Mohd. Haron and Company v.

Commissioner of Income Tax decided on 10.8.2004, this Court has held as follows:

...we find that it is not in dispute that the applicant had not maintained the stock details on daily basis. Thus, the stock position was not verifiable. u/s 145 of the Act, it is open to the Income Tax Officer if it is satisfied that the books of account have not been correctly maintained or are incomplete, he can proceed to make assessment u/s 144 of the Act, i.e., the best judgment assessment. As in the present case, the stock register has not been properly maintained, it did not depict true and correct picture of stock. Thus, the Income Tax Officer was justified in invoking Section 145 of the Act No exception can be taken on this ground.

17. Respectfully following the aforesaid decision, we are of the considered opinion that on the facts and circumstances of the present case the Tribunal was justified to sustain the ad hoc addition of Rs. 13,000/-.

18. So far as the question of production of the stock register at the time of hearing of the appeal constituted an additional evidence or not, we may mention that admittedly the stock register was not produced by the applicant either before the Assessing Authority or before the Appellate Assistant Commissioner in the appeal preferred u/s 246 of the Act. However, an effort was made, for the first time, to produce it before the Income Tax Appellate Tribunal. As the stock register had not been produced before the authorities below, it definitely constituted additional evidence. Under Sub-rule (4) of Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 the additional evidence can be filed alongwith an application stating the reason for filing such additional evidence. Sub-rule (5) of Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 prohibits a party from submitting any supplementary paper book except with the leave of the Bench and under Sub-rule (6) paper/paper books not conforming to the above Rules, are liable to be ignored by the Tribunal. Thus, any party cannot file any additional document as a matter of right which was not before the authorities below. An application has to be filed seeking leave of the Tribunal to bring on record the additional evidence. In the present case, the Tribunal has recorded that no such application was filed by the applicant and. therefore, it had declined to permit the applicant to file/produce the stock register before it. We see no illegality in the approach adopted by the Tribunal.

19. In view of the foregoing discussions, we answer both the questions in the affirmative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.