(1996) 01 RAJ CK 0051

In the Rajasthan High Court

Case No : DB IT Reference No. 12 of 1992

Chagan Lal D. Chouhan APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1996) 86 TAXMAN 484

Hon'ble Judges : B.R. Arora, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Vineet Kothari, for the Appellant; Sandeep Bhandawat, for the Respondent

Judgement

B.R. Arora, J.—The Tribunal, Jaipur Bench, has referred to the following two questions of law for the opinion of the High Court :

1. Whether on correct construction and interpretation of assessment order dated 26-6-1984 for the assessment year 1980-81, assessment order dated 25-4-1984 for the assessment year 1981-82 and assessment order dated 2-2-1985 for the assessment year 1982-83, the learned Tribunal was right in holding that the estimate of income by the income tax Officer in the original assessment was taking into account, the depreciation allowable to the assessee on the truck though it is not specifically said in the order ?

2. Whether the learned Tribunal was right in law in estimating the net income from the truck at Rs. 80,000 against returned by the assessee at Rs. 13,000 and estimated by the income tax Officer originally assessing on 25-4-1984 at Rs. 15,000?

Chagan Lal D. Chouhan, Sirohi is an individual who derived income for the assessment year 1982-83 from plying of truck, agriculture and interest. He filed a return before the ITO, Sirohi, for the assessment year 1981-82 declaring his total net income as Rs. 9,920 including the net income of Rs. 6,766 from plying of the truck. It was disclosed in the return that during the previous year he earned Rs. 13,000 from plying of Truck No. RJW 86 and out of which Rs. 6,234 were paid as interest to the bank and the total net income from the truck came to Rs. 6,766. The ITO, Sirohi, in his original assessment order dated 25-4-1984, assessed the income of the assessee from the truck at Rs. 15,000. He also made some addition on account of various cash credits. Aggrieved with the order dated 25-4-1984 passed by the ITO, Sirohi, the assessee preferred an appeal before the Assistant Commissioner (Appeals), Udaipur. The appeal, filed by the assessee, was allowed, the order dated 25-4-1984 passed by the ITO was set aside and the case was remanded to the ITO with the direction to make proper assessment de novo after considering all the relevant details and evidence which the assessee wants to produce and after giving an opportunity of hearing to the assessee. The assessee thereafter produced certain documents before the ITO. The ITO, Sirohi, by his order dated 26-9-1988 de novo assessed the assessee and assessed his income from plying of the truck at Rs. 1 lakh and allowed the depreciation at the rate of 40 per cent on the written down value of Rs. 1,84,000. Dissatisfied with the order dated 7-11-1986 passed by the ITO, Sirohi, the assessee preferred an appeal before the Assistant Commissioner (Appeals), Udaipur, who, by his order dated 31-3-1987, allowed the appeal in part and estimated the net income of the assessee from the plying of the truck before the depreciation at Rs. 92,000 instead of Rs. 1 lakh as estimated by the ITO. The other order passed by the ITO was, however, maintained. Aggrieved with the order dated 31-3-1987 passed by the Assistant Commissioner (Appeals), Udaipur, the assessee preferred an appeal before the Tribunal, Jaipur Bench. The Tribunal, by its judgment dated 26-9-1988, partly allowed the appeal filed by the assessee and estimated the net income of the assessee from plying of the truck at Rs. 80,000 subject to the depreciation. It was further directed by the Tribunal that the depreciation will be subject to only if the assessee fulfils the other conditions for the depreciation and it was left open for the assessee to claim depreciation in the year under consideration otherwise this income should be estimated as net income of the assessee from the plying of the truck during the year under consideration. The assessee thereafter moved an application u/s 256(1) before the Tribunal to refer five questions of law, mentioned in the application, for the opinion of the High Court. The Tribunal, however, referred the aforesaid two questions for the opinion of this Court and refused to refer the remaining questions mentioned in the application.

2. It is contended by the learned counsel for the assessee that the burden of proof lies on the revenue to prove the income of the assessee but the revenue failed to discharge this burden. In the original assessment the same ITO vide his order dated 25-4-1984, assessed the income of the assessee from the plying of the truck at Rs. 15,000 which has been arbitrarily raised to Rs. 1 lakh and which has been reduced by the Assistant Commissioner (Appeals), Udaipur to Rs. 92,000 and further reduced by the Tribunal to Rs. 80,000. This fixation of the income by the authorities is highly arbitrary. The learned counsel for the

revenue, on the other hand, has supported the orders passed by the aforesaid authorities.

3. We have considered the submissions made by the learned counsel for the parties.

4. It is true that it is for the revenue authorities to show that the amount received by the assessee constitute the ?income? and the income is liable to tax under the statute. The assessee did not file any account relating to the income derived by the assessee from the plying of the truck. During the assessment year 1981-82, the assessee deposited an amount of Rs. 25,766 towards the loan account with the Bank of Rajasthan on account of instalments and interest. There was accretion of Rs. 7,400 in the assessee''s capital account also. The assessee has also shown to have incurred the expenses of Rs. 7,000 during the assessment year against house hold expenses of his family. The assessee has shown his income of Rs. 80,000 from these sources. On the basis of these items the ITO assessed the income of the assessee at Rs. 1 lakh. This income was reduced from Rs. 1 lakh to Rs. 92,000 by the Assistant Commissioner (Appeals), Udaipur and Rs. 80,000 by the Tribunal. The authorities have given cogent reasons for estimating the income of the assessee from the plying of the truck at Rs. 80,000. The reasons given by the concerned authorities cannot be said to be, in any way, arbitrary or unjust. Merely because the income from plying of the truck by the assessee was originally assessed at Rs. 15,000 in the absence of any material available on record, it cannot be said to be a ground for not estimating the income at a higher rate when the fresh material came to the knowledge of the assessing authority afterwards. The original assessment order dated 25-4-1984, passed by the ITO was set aside by the Assistant Commissioner (Appeals), Udaipur, and a direction was issued to the ITO to de novo assess the assessee after giving an opportunity of hearing as well as or produce the documents to the assessee. The assessee thereafter placed on record certain documents and the ITO thereafter considered the matter and estimated the income of the assessee from the plying of the truck at Rs. 1 lakh which was ultimately reduced to Rs. 80,000 by the Tribunal. The reason of the authorities, therefore, cannot be said to be arbitrary and the burden has rightly been discharged by the authorities. The orders passed by the ITO, the Assistant Commissioner (Appeals), Udaipur or the Tribunal, cannot be said to be passed without any authority or basis. The income of the assessee (petitioner) from the plying of the truck has rightly been assessed and the Tribunal was also right in allowing depreciation if the assessee claims for that and satisfies the conditions.

Both the aforesaid questions are, therefore, answered as under :

Question No. 1 : Question No. 1 is answered in favour of the revenue and against the assessee and it is held that the Tribunal was right in holding that the net income of the assessee from the plying of the truck will be subject to depreciation allowable to the assessee of the truck provided the assessee fulfils the other conditions for the depreciation; and

Question No. 2 : Question No. 2 is answered in favour of the revenue and against the assessee and it is held that the Tribunal, Jaipur Bench, was right in law in estimating the net income of the assessee from the plying of the truck at Rs. 80,000 against the returned income by the assessee at Rs. 13,000 which was originally assessed by the ITO, at Rs. 15,000 by its order dated 25-4-1984.

