(2011) 10 RAJ CK 0001

In the Rajasthan High Court

Case No : ITA No. 508 of 2011

CIT — APPELLANT

Vs

Amrapali Jewels (P) Ltd. — RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:
Income Tax Act, 1961 — Section 145(3), 260A

Citation : (2011) 10 RAJ CK 0001

Hon'ble Judges : Bela M. Trivedi, J;A.M. Sapre, J

Bench : Division Bench

Advocate : J.K. Singhi with Anuroop Singhi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is an appeal filed by the Revenue u/s 260A of the IT Act against an order dt. 25th Feb., 2009 passed by income tax Appellate Tribunal, Jaipur Bench, Jaipur (for short called Tribunal) in ITA No. 1469/Jp/2008 arising out of assessment year 2005-06. By the impugned order, the Tribunal dismissed the appeal of Revenue and also dismissed the cross-objection filed by assessee and in consequence upheld the order of CIT(A).

2. So the question that arises for consideration in these appeals is whether appeal involves any substantial question of law within the meaning of section 260A ibid ?

3. Facts of the case are these :

4. The assessee is engaged in the export business of gold/silver. The question arose as to what should be the rate of GP that should be applied for the yearly turnover of the sale made by assessee during the year under consideration (2005-06) because of invocation of powers u/s 145(3) of the Act against the assessee which resulted in rejection of their books of account. The CIT(A) after examining the whole case on facts came to a conclusion that higher rate of 17.27 per cent should be applied for determination of GP and accordingly while

modifying the order of AO to that extent in favour of assessee granted relief to the extent of Rs. 15,55,990. It is this finding which was challenged by Revenue in appeal before the Tribunal. The Tribunal concurred with the finding of CIT(A) in to and accordingly dismissed the appeal filed by the Revenue. This is what the Tribunal held in para 9 while quoting the order of CIT(A) and upholding its reasoning :

Considering the above submissions, we find substance in the contention of the learned Departmental Representative that the defects pointed out in the books of account by the AO that there was no basis for valuation of stock at the end of the year and closing stock was valued on estimated basis hence stock was not subject to verification remained unexplained by the assessee even before the Tribunal. Thus on the basis of unexplained defects in the books of account, the AO was also justified in rejecting the books of account. We thus uphold the application of the provisions of section 145(3) of the Act in the present case. So far, as restriction of the application of reduced GP rate on Rs. 26 lacs (i.e. round figure of alleged bogus purchases worth Rs. 25,00,556) is concerned, we do not find substance in the argument of the learned Departmental Representative especially when sales declared by the assessee have not been doubted and interfered. For ready reference the relevant finding of the learned CIT(A) at p. 5 in this regard is being reproduced hereunder :

So far as addition is concerned the GP. rate of 16.06 per cent declared in the year under consideration is certainly less than GP rate of 21 per cent in the immediate preceding year as well as less than 17.45 per cent and 17.22 per cent in assessment year 2003-04 and assessment year 2002-03. Once books of account are rejected the only option left with the AO is to estimate GP rate. The AO has taken weighted average of 5 years. However, the contention of the Authorized Representative is considered that fall in GP rate was explained to the AO vide their letter dt. 18th Dec, 2007 which is at page No. 64 of the paper book. It was explained that sales have increased substantially from Rs. 7.79 crores to Rs. 13.07 crores and thus there is a growth of 68 per cent in sales. The increase in sale was attributed to the opening of new outlet at New Delhi. To boost sale in Delhi special discount was given which resulted in deduction in GP ratio. Also that there was steep competition in the jewellery trade and there was heavy fluctuation in gold bullion rates in the year under consideration. Also that the alleged bogus purchases of Rs. 25,00,556 out of total purchases of Rs. 1,326.16 lacs come to only 1.89 per cent. Thus the alleged bogus purchases are less than 2 per cent of the total purchases. The AO except the alleged bogus purchases has not pointed out any specific defect in maintenance of books of accounts and therefore whatever addition is to be made it should be with reference of the alleged bogus purchases only. The fact that there is a quantum jump in turnover and in the years except immediate preceding year the GP rates were 13.70 per cent, 17.22 per cent and 17.45 per cent and only because the GP rate of the immediate preceding year is also taken into account then the weighted average comes to 17.27 per cent. After considering the reasons for fall in GP rate and the fact that the alleged bogus purchases are less than 2 per cent of the total turnover the AO is directed to apply the GP rate of 17.27 per cent only on the sales corresponding to the bogus purchases. As the bogus purchases are 1.89 per cent of the total purchases considering the corresponding sales at 2 per cent of the turnover which comes around Rs. 26 lacs and therefore AO is directed to apply higher GP rate of 17.27 per cent on sales of Rs. 26 lacs corresponding to the bogus purchases. As a result, trading addition is made by applying the difference of GP rates which comes 1.21 per cent on sales of Rs. 26 lacs. The trading addition is thus reduced to Rs. 31,460 as against Rs. 15,87,450. As a result, the appellant gets relief of Rs. 15,55,990. The grounds of appeal are partly decided in favour of the appellant.

The first appellate order on the issue as discussed above is comprehensive and reasoned one hence we are not inclined to interfere therewith. The same is upheld. The ground and objection are rejected.

5. In the first place, what is involved in the case is a pure question of fact and not any question of law much less substantial question of law. Secondly, this Court cannot again in this appeal undertake the examination of factual issues nor can draw any factual inferences on the basis of explanation offered by assessee. Thirdly, once the explanation is accepted by an appellate Court on facts, then in such event, a finding recorded on such explanation is binding on the High Court being a finding of fact.

6. In our opinion, it is essentially for the taxing authorities to decide as to what should be the percentage rate of GP that should be applied on particular yearly turnover of the assessee. It is a matter of discretion to be exercised on settled practice applicable to business standards and which is prevalent in commercial world. There is no hard and fast rule that is applicable in such case and it depends upon facts of each case. In this case, the CIT(A) did go into the factual aspects of the case and after evaluating the whole factual scenario of assessees case came to a conclusion that higher rate of 17.27 per cent appears to be proper. In so applying, the assessee got partial relief to the extent of Rs. 15,55,990. In a case of this nature, we find no case to interfere because it is neither unreasoned, nor perverse and nor de hors to any provision of law. It is a finding which is capable of being recorded on the facts of this case.

7. Perusal of the impugned finding would go to show that Tribunal did examine the issue in detail and then recorded a finding. Such finding when challenged does not constitute any substantial question of law within the meaning of section 260A ibid in an appeal arising out of such order.

8. In our opinion, therefore, once the Tribunal accepted the factual explanation of assessee and accordingly, deleted the additions in question made by AO in exercise of its appellate discretionary powers, then it would not involve any substantial issue of law as such. In other words, this Court in its appellate jurisdiction u/s 260A ibid, would not again de novo hold yet another factual

inquiry with a view to find out as to whether explanation offered by assessee and which found acceptance to the Tribunal is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding recorded had been entirely de hors the subject, or when it had been based on no reasoning, or when it had been based on absurd reasoning to the extent that no prudent man of average judicial capacity could have ever reached to such conclusion, or when it had been found against any provision of law, then a case for formulation of any substantial question of law on such finding can be said to arise. Such is not the case here on facts. In view of foregoing discussion, we find no merit in the appeal that does not involve any substantial question of law within the meaning of section 260A of the IT Act. The appeal thus fails and is accordingly dismissed in limine. No costs.