
(2013) 01 RAJ CK 0236
In the Rajasthan High Court
Case No : Income Tax Appeal No. 47 of 2012

CIT

APPELLANT

Vs

Dr. Suresh Sharma

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Citation : (2014) 267 CTR 73

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—The present appeal u/s 260A of the Income Tax Act, 1961 ["the Act"] has been filed by the Revenue seeking to question the order dated 09.12.2011 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur ["the Tribunal"] in ITA No. 659/JU/08 and C.O. No. 25/JU/2009 for the assessment year 2002-2003 whereby the Tribunal has affirmed the order dated 17.09.2008 passed by the Commissioner of Income Tax (Appeals), Udaipur ["the CIT(A)"] partly allowing the appeal preferred by the assessee and deleting the additions, of Rs. 1,35,441/- on account of unaccounted purchase of medicine, Rs. 6,88,687/- on account of fees and Rs. 40,61,361/- as unexplained factory and hospital expenditure, as made by the Assessing Officer ["the AO"] in the assessment order dated 31.12.2007. Having heard the learned counsel for the appellant and having perused the material placed on record, we are clearly of the view that the present appeal essentially raises issues relating to appreciation of evidence resulting in finding on facts; and no substantial question of law is involved.

2. The facts of the case may be noted thus: The assessee runs a nursing home and also owns a marble cutting plant. The assessee filed his original return of income for the assessment year 2002-2003 on 08.03.2004 declaring total

income of Rs. 58,250/-. The assessment was completed u/s 143(3) of the Act on 28.02.2005 at a total income of Rs. 8,96,313/- besides agriculture income of Rs. 58,280/-. It appears that thereafter, a survey u/s 133A of the Act was undertaken at the business premises of the assessee and on the basis of material found during the course of survey, a notice u/s 148 of the Act was issued and the assessment was completed u/s 143(3) /148 of the Act on 31.12.2007 on a total income of Rs. 59,27,490/-. The AO found that the assessee had not included purchase of medicine of Rs. 1,35,441/- in the purchases shown at Rs. 10,35,869/- during the year and, therefore, made an addition of Rs. 1,35,441/- as undisclosed purchases. The AO further found that the sale of medicines and fee charged by the assessee was in the ratio of 60:40 and, therefore, he enhanced the sales to Rs. 26,14,251/- and after giving adjustment for profit on sale of medicines, computed the fee at Rs. 10,45,700/- and made another addition of Rs. 6,88,687/- after deducting the declared profit of Rs. 3,57,013/-. The AO further found that the assessee had made payments in respect of factory and hospital expenses out of undisclosed income and made yet further addition of Rs. 40,61,361/-(Rs. 24,19,029/- in respect of factory and Rs. 16,42,831/- in the case of hospital) to the total income. While making certain other additions, the AO ultimately assessed the total income of the assessee at Rs. 59,27,489/- after making an addition of Rs. 50,31,176/- to the original assessment order.

3. Aggrieved by the aforesaid assessment order dated 31.12.2007, the assessee preferred an appeal, which was considered and partly allowed by the CIT(A) in his order dated 17.09.2008. The learned CIT(A) reversed the findings recorded by the AO and recorded his findings on the three issues as under:-

(i) Addition on account of unaccounted purchase of medicines:

I have considered the facts of the case and submission of the Ld. A/R and found that the AO made the addition on the ground that the purchase amount of Rs. 1,35,440/- has not been shown by the appellant and, therefore, treated the same as undisclosed purchase and undisclosed investment. The A/R submitted that the original assessment was completed u/s. 143(3) by estimating the turnover at Rs. 15 lacs as against the declared sales of Rs. 12,67,290/- and made addition of Rs. 92,987/- by increasing the g.p. also, therefore, automatically covered the purchase in the estimated turnover. On going through the original order it is revealed that the AO estimated the sales at Rs. 15 lacs as against Rs. 12.67 lacs. The increase in estimation made over and above the declared turnover is more than the unexplained purchase, therefore, covered the undeclared purchase in the sales estimated. Therefore, no further addition is warranted. The addition is deleted. The appeal is allowed on this ground.

(ii) Addition to the total income on account of fees:

...On going through the facts it is noticed that during the course of survey no incriminating documents relating to this assessment year 2002-03 were found. The addition has been made on the basis of patient slips found and scrutinized

during the course of survey day i.e. 9-11-2006. The criteria for the survey year cannot be applied in earlier years. The addition made in this year is simply on the basis of calculation given by the AO. Further the point of fee has already been considered in the original assessment and made addition. Therefore, no further addition i.e. without any supporting material on record can be made. The addition is, therefore, deleted. The appeal is allowed on this ground.

(iii) Additions as unexplained factory and hospital expenditure:

...On going through the facts of the case it is noticed that M/s. Suresh Granite is the concern owned by the appellant and declared the income in the return of income showing the receipt and expenditure. Sushma Granite is the sister concern owned by the appellant's wife and is filing the return of income regularly showing the receipt and expenditure. M/s. Dolley Granite is a Pvt. Ltd. company and furnishing the return regularly. All these concerns are managed by the appellant and the payments noted by the appellant in a common note book. As both these concerns are assessed to tax separately, the payment appearing in the note book pertaining to these concerns cannot be considered in the hands of the appellant as payment from undisclosed receipt of the appellant. The appellant is the proprietor of Sharma Nursing Home and M/s. Suresh Granite and declared the income from these concerns in the return of income. The assessment for the assessment year 2002-03 was originally completed u/s. 143(3) and considering all the facts. Therefore, the question of again considering the payment as out of undisclosed sources and not genuine does not arise...

...the AO considered the payments in respect of all the concerns owned by the appellant and sister concern and the Pvt. Ltd. Co. as expenditure incurred by the appellant out of undisclosed receipts. As all the sister concerns are assessed to tax and furnished their returns separately, the expenditure incurred by the sister concerns are verifiable from the record. In the case of the appellant, the appellant is the prop. of two concerns i.e. Sharma Nursing Home and Suresh Granite. The income of both the concerns were estimated by estimating the total receipt. Therefore, the expenditure should also be considered as out of the total receipt. The appellant also explained the bank deposits properly. In the above circumstances of the case, the expenditure has to be allowed whether books of accounts maintained or not. Therefore, the addition made by the AO on account of expenses is deleted...

4. In the Revenue's appeal against the order passed by the CIT (A), the Tribunal found that the CIT(A) had rightly deleted the additions and did not find any reason to make interference. The Tribunal, inter alia, recorded its findings after, again, elaborately discussing the findings recorded by the CIT(A) on all the three issues thus:-

(i) Addition on account of unaccounted purchase of medicines:

...The assessing officer in the original assessment proceedings has already enhanced the sales from Rs. 12,67,290/- to 15,00,000/- and made a trading

addition. In such circumstances when the sales & purchases were declared on estimates basis and thereafter the assessing officer estimated the trading results by enhancing the sales by an amount of Rs. 2,22,710/-, the further addition of Rs. 1,35,441/- is unwarranted...

(ii) Addition to the total income on account of fees:

...There is a gap of 4 years in the assessment year in question and the survey year and therefore, the total receipts shown by the assessee looks reasonable considering the estimated charges of Rs. 120/- per patient for average 35 customers per day for 300 working days. Moreover, the AO has already enhanced the gross receipts at Rs. 15 lacs in the proceedings u/s. 143(3) and made trading addition by applying GP Rate of 30%. Therefore, we find no reason to make any interference in the order of CIT(A) on this ground.

(iii) Additions as unexplained factory and hospital expenditure:

We found that the entries noted in these diaries are details of sums paid by the assessee for hospital and the factory. The amount so paid includes the amount deposited in the bank accounts, which are part of regular assessment proceedings. The amount also includes payments made for M/s. Sushma Granite which is proprietor concern of wife of the assessee and M/s. Dolly Granite Pvt. Ltd. the payments made relating to both the concerns of the assessee i.e. M/s. Suresh Granite and M/s. Sharma Nursing Home are not exceeding the transactions as reflected in their Profit & Loss A/c and Balance Sheets. By perusing the said notebook it appears that the daily payments made by the assessee for expenditure or for depositing in the bank are noted in these notebooks. The assessee has not maintained any set of books of accounts. On the contrary there is no evidence on record to show that the payments noted in these notebook are over and above the amount of expenditures/deposits made in the bank accounts/other payments made by the assessee during the year. In these facts & circumstances of the case we are in the agreement with the finding given by the CIT(A). This ground of appeal is accordingly dismissed.

5. Seeking to challenge the order passed by the Tribunal, it is contended by the learned counsel for the Revenue that the AO had made the additions after properly scrutinizing the material available with him after survey was conducted u/s 133A of the Act; and the CIT(A) as also the Tribunal have erred in deleting the same. It is further submitted that the question involved in the matter is as to whether the Tribunal was legally right in upholding the deletions ordered by the CIT(A), of the additions made by the AO on account of unexplained purchases of medicines, on account of unexplained receipt of consultation fees and on account of unexplained expenditure at factory and hospital while ignoring the fact of survey carried out at the premises of the assessee.

6. In our view, the submissions do not make out any substantial question of law for consideration by this Court in this appeal. The grounds as urged and the questions as suggested essentially relate to the matters of appreciation of

evidence for factual enquiry and rendering findings on facts about the expenditure on purchase of medicines, receipt of consultation fees and expenditure at factory and hospital. Though the AO made the additions with reference to his opinion on the material found and impounded during the course of survey proceedings, however, the CIT(A) disagreed with the findings of the AO after thoroughly analyzing the material on record and after referring to the inconsistencies in the assessment order on accounting aspects and the fact that the trading additions had already been made in the original assessment. Thereafter, the Tribunal found no reason to interfere while scrutinizing the findings recorded by the CIT(A) on relevant considerations.

7. In an overall view of the matter, we are satisfied that the findings on facts have been rendered by the two appellate authorities in accordance with law; and the orders impugned do not suffer from any perversity or wrong application of any principle of law so as to raise any substantial question of law. Consequently and in view of the above, the appeal fails and the same is, therefore, dismissed summarily.