

(2010) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : Income Tax A. No. 1 of 2010 (A.Y. 2002-03)

CIT

APPELLANT

Vs

Jaora Flour and Foods (P.) Ltd.

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Income Tax Act, 1961 — Section 133A, 260A

Citation : (2012) 344 ITR 294

Hon'ble Judges : Viney Mittal, J;Prakash Shrivastava, J

Bench : Division Bench

Advocate : R.L. Jain, with Ms. Veena Mandlik, for the Appellant;

Final Decision : Dismissed

Judgement

1. Shri R.L. Jain, Senior Advocate with Ms. Veena Mandlik, Advocate for the appellant. This appeal u/s 260A of the income tax Act, 1961, has been filed by the Department against the order of the income tax Appellate Tribunal, dated 26-6-2009, passed in ITA No. 917/ Ind/2005 and ITA No. 864/Ind/2005, for the assessment year 2002-03.

2. The brief facts are that the assessee is engaged in the business manufacture of maida, flour (atta), suji, etc. A survey of the respondent business premises was carried out u/s 133A of the income tax Act on 26-12-2001. During the survey carried on in the business premises of the assessee on 26-12-2001, two slips were found mentioning about the sale of bardana of Rs. 10 lakhs (rupees ten lakhs). The assessee surrendered the said amount for taxation. Further, cash of Rs. 10 lakhs (rupees ten lakhs) was found from the office premises during the survey, which was also offered for taxation. Before the assessing officer, the assessee explained that the note relating to the sale of bardana of Rs. 10 lakhs (rupees ten lakhs) found in the office premises was not submitted by the accountant, therefore, no addition could be made for Rs. 10 lakhs (rupees ten lakhs) in respect of alleged unaccounted sale of bardana and Rs. 10 lakhs (rupees ten lakhs) received in cash from the office. It was also submitted by the

assessee that sales were subsequently recorded in the books of account on 17-12-2001, therefore, the sales are duly accounted for. Rejecting the explanation of the assessee, the assessing officer made addition of Rs. 10 lakhs (rupees ten lakhs) in respect of the sale of bardana, on the basis of noting in the loose paper and the addition of Rs. 10 lakhs (rupees ten lakhs) in respect of the cash, which was found in the office premises of the assessee. The Commissioner of income tax (Appeals) found that the entry in the loose paper in respect of sale of bardana relate to the sale which was effected only 3-4 days prior to the survey, but he treated the said transaction to be unrecorded on the date of survey. He deleted the addition of Rs. 10 lakhs (rupees ten lakhs), which was found in cash from the office premises of the assessee, since it was found to be the realisation of the sales of old bardana. The income tax Appellate Tribunal in appeal deleted addition of Rs. 10 lakhs in respect of unaccounted sales.

3. Counsel for the appellant submitted that the Tribunal has committed an error in deleting Rs. 10 lakhs (rupees ten lakhs) which were added by the Assessing Officer on account of the sale of bardana, on the basis of the entry in two loose papers found during the survey and the Tribunal committed further error in affirming the deletion of Rs. 10 lakhs (rupees ten lakhs) by the Commissioner of income tax (Appeals) in respect of cash found during the course of survey.

4. After hearing learned counsel for the appellant and on a perusal of the record, we find that the plea raised by the appellant-Department has already been dealt with by the Tribunal in detail. In the loose paper found during the survey, the sale of old bardana of Rs. 6.50 lakhs on 2-12-2001, and Rs. 3.50 lakhs on 24-12-2001, totalling Rs. 10 lakhs was mentioned. The Tribunal has found that this sale of bardana was entered in the books of account on 27-12-2001, and, thereafter, the profit and loss accounts were drawn up and the computation of income was based on the profit as per the profit and loss accounts, therefore, the computation of income included the alleged unaccounted sale of bardana also. The assessing officer ignoring the aforesaid aspects of the matter had made an addition in respect of the alleged sale of bardana. In the aforesaid background, the Tribunal had affirmed the deletion of Rs. 10 lakhs (rupees ten lakhs) by the Commissioner of income tax (Appeals), which the assessing officer had added on the basis of the loose paper found during the course of survey. The facts recorded by the Tribunal are not in dispute and the conclusion, which has been drawn by the Tribunal on the basis of the factual analysis also does not suffer from any error.

5. So far as the issue of the deletion of Rs. 10 lakhs (rupees ten lakhs), which were added on account of cash found during the course of survey is concerned, during the survey on amount of Rs. 10 lakhs (rupees ten lakhs) was surrendered on account of unrecorded sale of bardana and further Rs. 10 lakhs (rupees ten lakhs) were found as cash. The Tribunal has found that after completion of survey, the alleged unaccounted sale of bardana of Rs. 10 lakhs (rupees ten lakhs) was entered in the books of account by the assessee on 27-12-2001. The

assessee's explanation has been accepted that cash of Rs. 10 lakhs (rupees ten lakhs) found during the course of survey were on account of realisation from above sale of bardana of Rs. 10 lakhs (rupees ten lakhs). Thus the amount of Rs. 10 lakhs cash found during the course of survey was duly entered in the books of account and the same did not remain unrecorded and it was not unaccounted. The Tribunal noted that the addition of the same amount again during the assessment proceedings amounted to double addition, since it was already shown in the books of account. The facts recorded by the Tribunal are not in dispute and the reasoning given by the Tribunal for deleting the addition of Rs. 10 lakhs (rupees ten lakhs) on the undisputed facts does not suffer from any error. In view of the aforesaid analysis, we find that the appeal does not involve any substantial question of law. The issue raised by the appellant is concluded by the question of fact. The appeal is accordingly dismissed in limine.