(2013) 09 AHC CK 0058

In the Allahabad High Court

Case No : ITA No. 30 of 2010

CIT APPELLANT

Vs

Raghuraji Agro Industries (P.) Ltd. RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 09 AHC CK 0058

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Satish Chandra, J.—The present appeal has been filed by the appellant-Department u/s 260A of the income tax Act, 1961, against the judgment and order dated 23-9-2009, passed by the Income Tax Appellate Tribunal, Lucknow, in I.T.A. No. 365/Luc/2009, for the assessment year 2001-2002.

2. On 9-3-2010, a Coordinate Bench of this Court has admitted the appeal on the following substantial questions of law:--

1. Whether the learned Income Tax Appellate Tribunal has been right in law and on facts in revising their considered view that reference u/s 131(1)(d) of the I.T. Act to District Valuation Officer was justified.

2. Whether the learned Income Tax Appellate Tribunal has rightly deleted the additions made by the Assessing Officer on the ground that Assessing Officer had not rejected books of account of the assessee whereas rejection of books of account is not a necessary condition for addition u/s 69 of the I.T.Act, 1961.

3. The brief facts of the case are that the assessee has shown Nil income, but the assessing officer passed an order u/s 143(3) of the Act and observed that the assessee has constructed a factory building by showing lesser investment. So, he referred the matter u/s 142A of the Act to the DVO. After receiving report from the DVO, he made an addition of Rs.59,40,051/- for the difference by treating the same as income from the undisclosed source, but the CIT(A) has deleted the

said addition and the Tribunal has confirmed the same. Being aggrieved, the Department has filed the present appeal.

4. With this background, Sri Prashant Kumar, learned counsel for the Department has justified the order passed by the assessing officer He submits that the assessee has shown the lesser investment in the factory building. The Tribunal had upheld the validity of the reference made u/s 131(1)(d) of the Act by observing that after insertion of Section 142A with retrospective effect from 15-11-1972, the reference made u/s 131(1)(d) will be deemed to have been made u/s 142-A of the Act. He further submits that the issue relating to the validity of the reference to DVO was not before the CIT(A) and, therefore, both the orders passed by the appellate authorities, will have to be set aside.

5. On the other hand, learned counsel for the assessee has justified the impugned order.

6. After hearing both the parties and on perusal of the record, it appears that in the instant case, the assessing officer has not rejected the books of account and made the addition on the basis of the report of the DVO. In the instant case, the Commissioner (Appeals)) has observed in its order that the assessing officer has not specifically rejected the books of account and never pointed out any defects. The assessee submitted the books of account, vouchers, bills of building accounts which were duly examined by the assessing officer with due application of mind and the same were never rejected. The reference to the DVO without rejecting the books of account is not desirable. In the case of CIT v. Institute of Literacy Development, ITA 180/2008 dated 16-9-2013, this Hon''ble Court observed that "on the basis of the approved valuer, the assessee has declared the investment of the building, but the assessing officer was not satisfied. So, he has referred the matter to the DVO who again estimated the cost and made the additions." Estimation is a question of fact as per the ratio laid down in the case of Commissioner of Customs (Import) Vs. Stoneman Marble Industries and Others,

7. Needless to mention that the Tribunal is a final fact finding authority as per the ratio laid down in the case of Kamala Ganapathy Subramaniam and Another Vs. Controller of Estate Duty, and M. Janardhana Rao Vs. Joint Commissioner of Income Tax,

8. It may also be mentioned that the Hon''ble Apex Court in the case of (2010) 328 ITR 513 (SC) observed that the Assessing Authority could not refer the matter to the Departmental Valuation Officer in a case where there was a categorical finding recorded by the Tribunal that the books of account were never rejected.

9. In view of above, we find no reason to interfere with the impugned order passed by the Tribunal and the same is hereby sustained along with the reasons mentioned therein.

10. The answer to the substantial question of law is in favour of the assessee and

against the department.

11. In the result, both the appeals filed by the Department are hereby dismissed.