(2010) 02 KAR CK 0106

In the Karnataka High Court

Case No : IT Appeal No. 1195 of 2005 (Assessment year 1992-93)

Commissioner of Income Tax and Another — APPELLANT

Vs

Murali Traders — RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Income Tax Act, 1961 — Section 132 (4), 69 A

Citation : (2010) 02 KAR CK 0106

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This appeal is filed by the revenue challenging the order dated 20-9-2004 passed by the Tribunal in ITA No. 366/Bang/2001 raising the following substantial questions of law:

(i) Whether the Tribunal was correct in holding that the findings recorded by the assessing officer and confirmed by the Commissioner (Appeals) by treating stocks worth Rs. 9,81,876 found in the godowns of the Assessee as the income of the Assessee u/s 69A of the Act was merely based on assumptions and presumptions and not on any concrete evidence ?

(ii) Whether the Tribunal committed an error in not taking into consideration the admission made by the partner of the firm in the statement recorded u/s 132(4) of the Act which gives rise to a presumption that the same is correct and the inward and outward register maintained by the APMC yard which compulsorily records the items brought in and taken out and the claim of the Assessee that these items belong to certain agriculturists who have not produced any material to show that their items have been deposited with the Assessee the date, item etc. especially when these stocks were not recorded in the books of the Assessee and consequently recorded a perverse finding ? and (iii) Whether the Tribunal was correct in holding that the produce were returned to the various farmers with compensation which is supported by documentary evidence without actually identifying the material based on which such a conclusion was arrived at ?

2. The Respondent-Assessee is carrying on the business of commission agency from the office-cum-godown premises at APMC at Arsikere. A search was conducted on 8-1-1992 at the business premises of the Assessee and also the residential premises of the father of two partners. The Assessee admitted taxable income of Rs. 56,940 in its return filed for the assessment year 1992-93 on 31-12-1992. According to the assessing officer while examining the books at the business premises of the Assessee, accounted advances made to agriculturists were being squared up by way of issue of cash receipt voucher at the time of disposing of the commodities brought by specific agriculturist or farmer.

3. The department during the course of search found the stock of agricultural produce, the details of which are mentioned by the assessing officer in his order:

In the godown at 4th Main, APMC, cotton stock of 822 bags totally valued at Rs. 5,55,840 and tamarind seeds of 740 bags valued at Rs. 74,000 were found. In the godown at 2nd Main Road APMC Yard, the following stock valued at Rs. 4,39,961 were found:

1.

Copra

18 bags

29,412

2

Cotton

453 bags

2,75,424

3

Greengram

2 bags

1,300

4

Gingeroil seeds

101 bags

1,21,200

5

Horsegram

10 bags

2,750

6

Ramtil

2 bags

1,600

7.

Castoroil seeds

6 bags

2,925

8.

Sunflower oil seeds

5 bags

2,500

9.

Karamani seeds

1bag

450

10.

Tamarind seeds

2 bags

200

11.

Ragi

10 bags

1,800

12.

Groundnut seeds

1 bag

400

Total

4,39,961"

A statement of one of the partners of Assessee firm was also recorded wherein he had admitted that the said stock belong to the Assessee and the same was valued at Rs. 9,81,876. However, the department found that the stock was written only upto June, 1991 and the documents produced by the Assessee did not prove as to which portion belonged to which agriculturist and which portion belonged to Assessee, as the same could not be bifurcated. Consequently, the assessing officer concluded that the entire stock valued at Rs. 9,81,876 belonged to the Assessee which had not been recorded in the books of accounts and there was no satisfactory explanation for the same and accordingly, the said amount was added to the total income.

4. Being aggrieved by the said order, the filed Assessee an appeal before the Commissioner (Appeals) who by his order dated 18-10-2000 dismissed the appeal. Being aggrieved by the said order, the Assessee preferred an appeal before the Tribunal. The Tribunal has in detail gone into the nature of the business of the Assessee and also the fact that the Assessee being a commission agent was entitled to have stocks of agriculturists at his premises and that revenue had not produced any evidence to substantiate that the farmers had obtained any loan or cleared their loans, for which, an entry should have been there in the accounts, if any, maintained by the Assessee. It is a normal practice that if the produce are put up for auction, the names of the farmers who bring the produce to the commission agents, and the names of the persons who purchase the produce in auction, the date, quantity, rate and value etc., are required to be found in the list, but no evidence had been established by the revenue to substantiate its claim that the entire produce belonged only to the Assessee and that the agriculturists had not retained their products in the office of the Assessee. The Tribunal also found that there was proof of the seal of the APMC authorities to show that the produce were duly returned to the farmers. Accordingly, the Tribunal allowed the appeal fried by the Assessee. Being aggrieved of the said order this appeal is preferred by the revenue.

5. We have heard the learned Counsel for the department and the learned senior counsel for Respondent-Assessee and. perused the material on record.

6. We find that the contention raised by the Appellants that the entire stock, which was detected at search belonged to the Assessee has not been proved and no substantial evidence has been produced to show that the stock belonged to the Assessee only. On the other hand, from the material on record, it is factually established that the various agriculturists or farmers had retained their produce in the premises of the Assessee and therefore, the entire stock which was detected at the time of search cannot be held to be produce of the Assessee only and which were not recorded in its accounts.

7. In the instant case, the Assessee is carrying on commission agency business in respect of the agricultural products. The Assessee maintains stock of the commodities, which are brought by individual farmers to the market yard. The method of sale is by tender system or by tender, whereby the produce is displayed in lots in the premises of the commission agent and the traders quote their price and the produce is sold to the highest bidder which is declared by the Market Committee. If the farmer does not agree for the price, he is at liberty to take back the produce or can retain the same in the premises of the commission agent. It is also on record that the officers of the department went to the farmers directly and examined them. The farmers claimed ownership of the produce and not even a single farmer stated that the produce were actually sold to the Assessee or they had nothing to do with the produce or they had received money for the same. In the circumstances, the produce were retained by the farmers in the premises of the Assessee so as to await for the best price and then to be sold. Therefore, the stand of the revenue that the Assessee had directly purchased the produce from the farmers and kept the same in the godown is not proved. There is also no proof that the produce were purchased by any other commission agent for which the Assessee was supposed to get commission as per the rules. Under the regulations of APMC, no outright purchase can be made by the commission agent in the market yard and the Assessee being a registered commission agent, cannot trade indirectly as alleged by the revenue. It is also not established that the farmers had obtained any loan or cleared their loans in respect of which there should have been entries in the accounts maintained by the Assessee. If such was the case, then the produce of the farmers could not be put up for auction. According to the Tribunal, no nexus has been established by the revenue to further substantiate its claim.

8. Taking into consideration the nature of business of the Assessee and the normal practice followed by various agriculturists to store the products in the premises of the commission agents so as to wait for the best price before putting the same for auction, we are of the view that the said stocks, which were detected at the time of search could not have been held to be one belonging to the Assessee only and thereby holding that there was some unaccounted products in the accounts of the Assessee. The reasons given in detail by the Tribunal are just and proper for allowing the appeal. We find that the substantial questions of law raised in the instant appeal have to be accordingly answered against the revenue and the appeal is dismissed.

