(2005) 01 MP CK 0031

In the Madhya Pradesh High Court

Commissioner of Income Tax — APPELLANT

Vs

Ashok Kumar and Party — RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:
Income Tax Act, 1961 — Section 143, 260A, 263

Citation : (2008) 299 ITR 35 : (2005) 149 TAXMAN 163

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an appeal filed by the Revenue (Commissioner of income tax) u/s 260A of the Income Tax Act, 1961, against an order dated July 3, 2000, passed by the Income Tax Appellate Tribunal (for short hereinafter referred to as the Tribunal) in I.T.A. No. 340/Ind./99. This appeal was admitted for final hearing by passing the following order on December 4, 2000:

4-12-2000

Shri RL Jain, L/c for the Revenue.

Admit.

Notice.

(Bhawani Singh) (Shambhoo Singh) Chief Justice Judge.

2. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned Counsel for the Revenue. None for the assessee.

3. u/s 260A of the Act, the appeal can be admitted for final hearing only when it involves any substantial question of law. Sub-section (3) then obliges the High Court to formulate substantial question of law which in the opinion of the High Court is involved. Sub-section (4) then empowers the High Court to hear and decide the appeal only on the question so formulated. The proviso to Sub-section

(5) enables the High Court to decide the appeal on reasons to be recorded on any question not initially framed provided the High Court is satisfied that such question does arise and/or involve in the case.

4. Let us see what are the facts of this case and whether the appeal involves any substantial question of law within the meaning of Section 260A of the Act so as to enable this Court to formulate the question for being answered.

5. The assessee derives income from liquor contract (both country as also IMFL). In the course of assessment proceedings u/s 143(3) of the Act for the assessment year 1994-95, dispute arose in regard to certain entries.

6. One was in relation to sealing charges for Rs. 5,47,516. This was debited in the trading account. In the opinion of taxing authorities an amount of Rs. 3,06,168 was debited in excess. In other words, the assessee should have debited a sum of Rs. 2,41,348 in place of Rs. 5,47,516.

7. Then dispute came regarding the purchase of the country liquor at 2,59,636 litres. According to the authorities it should have been at 1,94,727 litres.

8. Then came one entry relating to the purchase price of the country liquor. According to the assessee, it was mentioned at Rs. 17,79,761 in the profit and loss account whereas, according to the authorities, it should have been at Rs. 10,87,799.

9. Then came the entry regarding shortage of one M.G. for Rs. 41,84,501.

10. The Assessing Officer made the assessment. However, the aforementioned infirmities were noticed by the Commissioner in the order of assessment passed by the Assessing Officer. It is for this reason, the Commissioner took shelter of Section 263 powers and finding these defects/infirmities to be prejudicial to the interests of the Revenue issued notice to the assessee and called upon to show as to why the order of assessment to the extent mentioned supra, i.e., in relation to the aforesaid entries be not set aside. The assessee filed reply and explained as to why the entries referred be upheld. The Commissioner did not accept the explanation of the assessee and passed the order. It is this order the assessee challenged in appeal before the Tribunal. By the impugned order, the Tribunal allowed the appeal in part and deleted some of the issues in favour of the assessee. This appeal is filed by the Revenue against that part of the order by which certain entries have been upheld by the Tribunal in favour of assessee by setting aside of an order passed by the Commissioner and restoring that of the Assessing Officer. So far as some entries which were not interfered with are concerned, the assessee has not chosen to file the appeal. They have thus become final. This is how this appeal has come to this court.

11. We have heard learned Counsel for the parties at length. Having heard them we are unable to notice any substantial question of law as contemplated u/s 260A ibid. This fact we can examine at this stage at the instance of the respondent by virtue of Section 260A(4). Since none of the question sought to be

raised by the Revenue satisfy the rigour of Section 260A and hence, the appeal is liable to be dismissed.

12. In fact the appeal does not involve any interpretation of the section, rule or circular. It also does not involve any interpretation of judicial decisions. The question, whether the explanation offered by assessee in relation to particular credit or debit entry in the profit and loss account is acceptable or not? Is a question of fact, if it was not accepted by the Commissioner in Section 263 proceedings initiated against the assessee, the same found acceptance to the Tribunal in part. This Court in further appeal cannot go into the same with a view to find out whether the reasoning assigned by the Tribunal in accepting the explanation is right or not. The Tribunal had the jurisdiction to accept and it did so. It is only when the appellant is able to point out extreme perversity in the factual finding. Such as it being totally de hors the provisions of the Act, or any law, or explanation offered, a substantial question of law emerges out of such finding. Such does not appear to be the case.

13. We have gone through the impugned order of the Tribunal. We find that the Tribunal examined the explanation of the assessee in respect of each entry and gave their own reasoning. Out of four, two were accepted and remaining were not.

14. In sum and substance, since no substantial question of law was noticed in the impugned order, i.e., in this appeal and hence, it is dismissed.

No costs.

