
(2003) 04 MP CK 0088
In the Madhya Pradesh High Court
Case No : M.A. (I.T.) No. 18 of 2001

Commissioner of Income Tax	Vs	APPELLANT
Balchand Ajit Kumar		RESPONDENT

Date of Decision : 14-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 260A

Citation : (2004) 135 TAXMAN 180

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Rohit Arya, for the Appellant; G.N. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—In this appeal preferred u/s 260A of the income tax Act, 1961 (for brevity "the Act"), the Revenue has assailed the order passed by the Tribunal in ITA No. 269 (Jab.) of 1998. Sans unnecessary details, the facts as have been set forth are that there was a search operation conducted at the business and residential premises of assessee. During the search, it was found that there were credit sales which were not reflected in the books of account. The Assessing Officer on scrutiny of the regular books of account maintained by the assessee being dissatisfied rejected the same and added a sum of Rs. 8,19,255 towards the sales profit of the assessee. The said order was contested by the assessee in the backdrop that the sales were fully recorded and the assessee was following a system of recording the credit sales in the way as and when the credit sales were made, the assessee issued cash memos of sales and the outstandings were recorded in the copy separately. The Commissioner of income tax (Appeals) came to the conclusion that the entire credit sales could not have been included in the total income of the assessee and accordingly followed the method of adding a net profit rate of five per cent on these sales and accordingly Rs. 40,960 was included on that score. An appeal was preferred by the Revenue assailing the order of the first appellate authority vide which he has adopted this

net profit rate. The assessee being dissatisfied with regard to the rate of addition preferred an appeal. The Tribunal in its order came to hold that the first appellate authority had taken recourse to a reasonable method by adopting the net profit rate inasmuch as the entire sale could not have been regarded as the profit of the assessee. The Tribunal, however, did not think it appropriate to reduce the rate which was added by the first appellate authority. Accordingly, it dismissed both the appeals. This Court while admitting the appeal framed the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the assessee having not included the credit sales in the books of account and in the balance-sheet, the Tribunal was justified assuming that the assessee followed different method of accounting for unrecorded sales, without any factual basis, and as such whether the order of the Tribunal does not suffer from perversity being against the settled principles of accountancy?

2. It is submitted by Mr. Rohit Arya, learned counsel for the Revenue, that the approach of the first appellate authority as well as the Tribunal is absolutely perverse inasmuch as the method which was adopted by the assessee was not acceptable and, therefore, no benefit should have been conferred on him and such conferment amounts to perversity of approach.

3. Per contra, Mr. G.N. Purohit, learned counsel for the assessee, has contended that when there is undisclosed income, the entire income cannot be put in the compartment of undisclosed income but a net profit rate has to be applied and once a net profit rate is applied, it cannot be said that there is perversity of approach. To buttress his submission, he has commended to us the decision rendered in the case of Commissioner of Income Tax Vs. President Industries, .

4. On appreciating the rival submissions raised at the Bar, we have carefully perused the order passed by the Commissioner of income tax (Appeals) and also that of the Tribunal. It is not disputed that the undisclosed income was Rs. 2,57,000. The sole question that arises for consideration is whether the entire income has to be treated as profit or there should be adoption of a method of net profit income. In the case of President Industries (supra), the High Court of Gujarat in a similar matter came to hold as under:

Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of income tax (Appeals) and the income tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application u/s 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which

have been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales.

5. We are in respectful agreement with the aforesaid opinion inasmuch as the total sale cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case net profit rate of five per cent has been applied. We do not think it appropriate that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach. In view of the aforesaid, we find no merit in the appeal and the same stands dismissed.