(1977) 09 CAL CK 0038

In the Calcutta High Court

Case No : Income-tax Reference No. 324 of 1971

Commissioner of Income Tax — APPELLANT

Vs

Banshidhar Durgadutt — RESPONDENT

Date of Decision : 06-09-1977

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1978) 115 ITR 356

Hon'ble Judges : S.C. Deb, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Ajit Sengupta and P.K. Majumdar, for the Appellant; Sanjay Bhattacharyya, for the Respondent

Judgement

Deb, J.—The following questions are involved in this reference u/s 66(2) of the Indian Income Tax Act, 1922, and/or u/s 256(2) of the Income Tax Act, 1961:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal, while following its order for the earlier year, i.e., for the assessment year 1954-55, should not have taken the ratio in yielding of oil cake and refraction shortage conformably with its earlier order ?

2. If the answer to the above question is in the affirmative, then whether the Tribunal was right in not giving the credit as to the refraction shortage of the material at 2 per cent, as was given in the assessment year 1954-55?"

2. The assessment year concerned is 1955-56 for which the relevant previous year ended on 26th October, 1954. In the production account in respect of mustard oil, the assessee''s1 account disclosed the crushing of 3,37,350 maunds of seeds and a yield of 35''7 per cent. The assessee did not maintain any production of stock register. The ITO found that the shortage shown was excessive. In the preceding year, the assessee disclosed a yield of 35.8% but it was estimated at 36.46%. In view of certain defects in the accounts and the lower yield shown by the assessee, the ITO rejected the results and estimated

the yield at 36.4% and a shortage in production at 2,361 maunds. He also computed the value of the shortage of oil at the rate of Rs. 61 per maund at Rs. 1,44,169. After taking into consideration the said shortage and the corresponding reduction of 2,361 maunds in the manufacture of oilcakes of the value of Rs. 19,331, he added Rs. 1,24,838 to the income of the assessee.

3. In appeal, the AAC went into the comparative statements of production of past years and the year under consideration and estimated the yield at 36% and determined the shortage at 919 maunds and its value at Rs. 56,069. After making an adjustment, he reduced the addition to Rs. 50,000.

4. The assessee and the department filed appeals before the Tribunal. The assessee objected to the addition and the department objected to the reduction.

5. In view of the lower yield shown by the assessee in the accounting year and that in the immediately preceding year the yield was determined at 36.1% by the Tribunal, it held that the yield at 36% in the accounting year was rightly determined by the AAC inasmuch as the assessee had shown a wastage of 0.85%, whereas in the immediately preceding assessment year such wastage was shown at 2%. In that view of the matter, it sustained the order under appeal.

6. The assessee then made an application for rectification of the order of the Tribunal and contended that in the earlier year the yield was not determined at 36% but at a lower figure. The Tribunal rejected the said application for the reasons recorded in its order.

7. Mr. Sanjay Bhattacharyya, learned advocate for the assessee, argues before us that the Tribunal, in conformity with its order in the earlier year, should have taken into consideration the wastage of 2% and not having done so its decision is not correct. But in the accounting year it was not the case of the assessee that there was a wastage of 2%. On the other hand, its case was that the wastage was 0''85%. His arguments must, therefore, fail.

8. It may be noted here that no other contention has been made before us on behalf of the assessee. In the premises, we answer question No. 1 in the negative and in favour of the revenue. In view of our aforesaid answer, question No. 2 does not call for any answer and we decline to answer it. There will be no order as to costs.

C. K. Banerji, J.

9. I agree.