

(2011) 02 DEL CK 0265

In the Delhi High Court

Case No : IT Appeal No. 599 of 2009 & ITA No. 599 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Bindals Apparels

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 133A, 143(3)

Citation : (2011) 3 AD 176 : (2011) 332 ITR 410

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : N.P. Sahni and Ruchesh Kr. Sinha, for the Appellant; O.S. Bajpai and V.N. Jha, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The Assessee is a firm which was constituted in July, 1997 with Shri R.D. Gupta, his wife Smt. Kusum Gupta and a company M/s. Bindal Apparels Pvt. Ltd. as partners, while Shri Anuj Bindal was admitted to the benefits of the partnership, being a minor. With effect from 03.04.1998, when Shri Anuj Bindal Attained majority, a fresh partnership deed was executed. The Assessee is engaged in the business of trading of garments and other items like artificial jewellery, artificial garments plants, purses, etc. The Assessee carried on its business from 47, Bungalow Road, Delhi. This property does not belong to the Assessee firm but was purchased by its four partners from one Shri P.C. Jain. Four partners are the owners of different portions of this property which was purchased by separate sale deed. During the survey, the Assessee firm offered an amount of Rs. 25 lacs on account of unexplained investment in building at 47, Bungalow Road, Delhi for taxation. Shri R.D. Gupta, its partner, also offered a sum of Rs. 9.8 lacs being excess cash found at the time of survey for which he could not offer any explanation at that time. Difference in the stock to the tune of Rs. 48,000 was also found, which was again offered for taxation.

2. The facts pertain to the Assessment Year 1999-2000 corresponding to the

Financial Year 1998-99. In that year, a survey was conducted u/s 133A of the Income Tax Act (hereinafter referred to as "the Act"), i.e., on 21.01.1999. For the year in question, return of income was filed by the Assessee on 25.11.1999 declaring a total income of Rs. 27,04,313.50. In this return, Rs. 25 lacs which were offered for taxation at the time of survey were included. The Assessing Officer (AO) framed the assessment u/s 143(3) of the Act and in the assessment order dated 28.03.2003 passed by him, he made four additions. It is not necessary to mention about these additions except with which we are concerned in the present appeal. This addition was in the sum of Rs. 46,95,347 on account of fall in gross profits (GPA). The AO had noticed that there were wide fluctuations in the GP rates for three different periods in the same year. The GP rate for the whole year as shown by the Assessee was 14.40%. On the other hand, GP rate for the period 01.04.1998 to 21.01.1999 was 1.96% and GP rate for the period 21.01.1999 to 31.03.1999 was 38.63%. The Assessee was required to explain the same and show cause notice was also issued as to why the books of account be not rejected because of the aforesaid disparity, moreso when these were available at the time of survey. Though the Assessee had given the explanation stating that there was a typographical error in the trading account prepared at the time of survey and actual trading accounts were shown, the AO still found that there was wide variation in the GP rate on the Assessee for different periods falling in the same financial year and for the complete financial year. It was found that where GP rates were worked out at 19.59% upto 21.01.1999, it was worked out at 4.10% for the latter part of the financial year and 14.40% for the whole year. For this reason as well as various other reasons discussed in the order, the AO rejected the books of account. These reasons given by him can be summarized as under:

(1) Though in the Audit Report with the return for the assessment year 1998-99, it was mentioned that the Assessee maintained cash book, bank book, ledger and sales/purchase registers, but for the assessment year in question, the Audit Report has mentioned only cash book and ledgers. Thus, the Assessee is not maintaining any stock register and sale/purchase register, which it was doing in the preceding year.

(2) The Auditor had qualified his report by saying that it was not possible to give quantitative details of items. This implies that no closing stock inventory is prepared at the end of the financial year. In this way, the Assessee had complete freedom to show the closing stock and G.P. rate it wanted to show in further year.

(3) The Assessee was asked to file quantitative details of opening stock, purchases, sales and closing stock for Financial Year 1998-99. In response, the Assessee filed inventories of opening and closing stock only which after verification, was found to be incorrect from which the AO deduced that the Assessee had not maintained the accounts in the manner that real profits could be calculated there from.

(4) The explanation of the Assessee that it was not maintaining stock register

because it was not feasible due to multiplicity of items in which the Assessee was dealing, was not found convincing by the AO. In addition, following discrepancies were pointed out by the AO in the inventories:

a) There was no change in the value of stock of jewellery and silk plants as on 1-4-98 and 31-3-99.

b) The rates of gents shorts, pajamas and Bermudas were taken to be the same as on 1-4-98 and 31-3-99 i.e. there was no change in the rates of these items in the course of the whole year as per the Assessee's working of inventory.

c) Assessee was asked to relate every item in the opening and closing stock with the purchase bill of that item so as to justify its valuation.

d) Last but not the least the value of every item of a given type e.g. shirts, shorts etc. was taken to be the same at the beginning and close of the year irrespective of the brand, size, quality, style etc. Whereas the Assessee is dealing in items of different brands and the value of a given item of two or more brands cannot be the same. This fact was also observed at the time of survey on 21-1-99 when inventory of stock was prepared. It is also borne out by the purchase bills produced by the Assessee.

(5) The Assessee was asked to produce purchase bills of jewellery and silk plants taken in the opening and closing stock. However, the Assessee produced the bills value whereof did not exceed Rs. 1.35 lacs which was of little relevance in a closing stock of Rs. 1,39,24,632.

(6) Regarding the rates of gent's shorts, pajamas and bermudas, a vague reply was given that items in the opening stock could not be sold during the year and were present in the closing stock which accounted for the same rates of these items. However, no bills to substantiate this claim were produced.

(7) No sale memos were produced for verification, which led to the AO to opine that there were no means of verifying the sales. Likewise, the following deficiencies were noticed by the AO in the books of accounts:

(a) Quantitative details of sales and purchase could not be furnished despite repeated queries, besides Assessee having not even complied with this requirement of audit report.

(b) As already stated, the rates of gent's shorts, bermudas and pajamas as on 31.03.1998 were shown to be the same. No satisfactory evidence in support of this valuation could be produced, as already discussed.

(c) In the inventory of opening stock and closing stock for the year, a flat rate has been applied to each item without taking into account size, brand, style, etc. In the inventory prepared at the time of survey, it has been found that the rate of any items varies according to brand, size, quality etc. It is, therefore, obvious that the inventory of opening and closing stock filed by the Assessee during the course of assessment proceedings, is cooked up and does not give a true picture

of the actual stock available either at the beginning or end of the financial year.

(d) The Assessee contended that it had returned some of the purchases made by it from various parties. Three such purchases returned were taken up on test check basis and the Assessee was asked to relate them with the corresponding purchase bills. The Assessee failed to do so in the case of Woman's World.

(e) The Assessee failed to correlate any sale with the corresponding purchase of an item.

(f) The Assessee was asked how it keeps track of all the items in the absence of stock register or stock tally. The Assessee replied vide letter dated 26.03.2002:

In respect of relation of purchase bills to closing stock while physical stock taking is done, it is submitted that the same is done on the basis of style, size, brand of items in the absence of stock register. Similarly, it is done for the purchase returns from time to time. It is further submitted that as items are different from time to time they are related to the purchase bills for date and prices on the basis of style, size and brand. In this regard, it is further submitted that every vendor has got its own brand and by referring the brand etc. it is known as to whom purchaser bills belong and on the basis rate and prices and date of the items being returned are known and fully described in the debit notes issued to the relevant vendors. It is all done physically and manually.

(g) No cash memos for sales made during the financial year could be produced and letter was filed by the Cassese's counsel on the last day of hearing that certain records of the Assessee firm had been destroyed in a fire which took place at the Cassese's premises in June, 2000. This plea has been taken at the 11th hour to justify the non-production of various bills, vouchers, etc. as discussed above.

3. In view of the aforesaid discrepancies, as per the AO, he rejected the books of accounts in view of the following decisions of the Supreme Court and the other High Courts:

(i) ORISSA FISHERIES DEVELOPMENT CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, ORISSA.,];

(ii) S.N. Namasivayam Chettiar Vs. The Commissioner of Income Tax, Madras,];

(iii) Amiya Kumar Roi & Bros. v. CIT 2006 ITR 306 (Calcutta); and ITA No. 599 of 2009 Page 8 of 11

(iv) Awadhesh Pratap Singh Abdul Rehman and Brothers Vs. Commissioner of Income Tax,].

4. After rejecting the books of accounts, the AO opined that under the given circumstances GP rate of 21% of sales of Rs. 6 would meet the end of justice. The Assessee had declared the sale of shares at Rs. 5,48,90,910 for the financial year relevant to the Assessment Year 1999-2000. Going by that figure, the AO

estimated the sales in the year in question @ Rs. 6 Crores. While fixing 21% GP rate on sale of shares @ Rs. 6 Crores, the AO gave, inter alia, following reasons:

By Sh. R.D. Gupta's own admission the profit of the Assessee ranges between 25 to 30% (profit margin of 40-50% and at times discount of 10-15%). Therefore, keeping in view the gross profit as noted from the three trading accounts for the financial year 98-99 and deposition of Sh. R.D. Gupta, I am of the opinion that it would be reasonable and fair to apply a G.P. Rate of 21% on sales of Rs. 6 crores which would meet the ends of justice. This would result in gross profit of Rs. 1,26,00,000/- against Rs. 79,04,653/- disclosed by the Assessee (addition of Rs. 46,95,347/-).

5. The first appeal preferred by the Assessee against the aforesaid order of the AO was dismissed by the CIT (A). While accepting the reasoning given by the AO, the CIT (A) additionally stated that though the Assessee was objecting to addition of Rs. 46,95,347. At the time of survey itself, discrepancies to the tune of Rs. 35.28 lacs was found which was unaccounted and was offered for taxation. So much unaccounted income within 9 months 21 days of the start of the business would show that it was at the rate of Rs. 3,61,850 per month. In this manner, unaccounted money for 12 months works out Rs. 43,42,200 and looking from this angle, the AO's estimate of Rs. 46,95,347 could not be said to be devoid of merit.

6. The Income Tax Appellate Tribunal ("Tribunal" for brevity) has allowed the appeal thereby deleting the said addition and holding that GP rate of 14.40% declared by the Assessee was proper and reasonable. We find from the impugned order of the Tribunal that the Tribunal has stated that there was no reason to disregard the books of accounts inasmuch as:

(a) At the time of survey in the stock inventory, difference of only Rs. 48,000 was found and looked at the volume of business and list of inventories, it was a negligible difference. Moreso, the Assessee had demonstrated that it was attributable to packing material which had been mistakably debited to Profit and Loss Accounts. Therefore virtually, no discrepancies were found in the trading operations and stock. No doubt, day to day stock register is an important record, which was not maintained. However, the books of accounts could not be rejected merely because of its absence, moreso when there was no adverse comments whatsoever about the posting of entries and maintenance of accounts. No incriminating document of whatsoever was found by the Revenue Department during the course of survey. There was no adverse comment that books were not lying with the CA or that the books of accounts as produced before the AO were defective or suffered from any infirmity. If the AO had any doubt, he could have impounded the same for verification purposes.

(b) The AO was wrongly swayed by the facts that the books of accounts were not shown at the time of survey when a specific explanation was given that they were kept with Chartered Accountant for some accounting verifications and in

any case, a CD of all the purchases and sales was given to the Department which had not been found fault with and on the basis whereof the books were written upto date. This would indicate that there was nothing wrong with the business operation of the Assessee. Since the books of accounts were correct, complete and supported by vouchers, these could not be rejected.

(c) In respect of GP rate declared by the Assessee, the Tribunal pointed out that during the survey, the actual stock of the Assessee had been physically verified and valued by the Department resulting G.P. rate @ 19.59%. The reason for less GP rate in post survey period, i.e., 22.01.1999 to 31.03.1999 was because of the fact that in this period huge discounts were offered by the Assessee on the merchandise.

(d) This was the first year of business and GP rate of 14.40% disclosed by the Assessee was quite reasonable. Moreso, there was no reason to fix the GP rate of 21% when no comparable case had been cited or supplied to the Assessee to contradict the same.

7. We find that these are the findings of fact arrived at by the Tribunal on the analysis of evidence produced. No question of law arises, this appeal is accordingly dismissed.