
(2005) 07 AHC CK 0167

In the Allahabad High Court

Case No : Income Tax Reference No. 32 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Das Industries

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Income Tax Act, 1961 — Section 132, 143(1), 148, 256(1)

Citation : (2005) 199 CTR 370 : (2008) 303 ITR 199 : (2005) 149 TAXMAN 328

Hon'ble Judges : Rajes Kumar, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : R.K. Upadhyay and S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—The Income Tax Appellate Tribunal has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the assessment year 1981-82 and 1982-83 for opinion to this Court.

"(a). Whether on the facts and in the circumstances of the case, the Tribunal was correct in confirming the order of the CIT (A) holding that the difference between the stock value shown in the books of accounts of the assessee and value disclosed to the bank was not assessable to tax as deemed income?"

"(b) Whether on the facts and circumstances of the case, the Tribunal was correct in confirming the order of the CIT (A) for granting renewal of registration to the Firm?"

2. The brief facts of the case are as follows:-

The assessee/opposite party hereinafter referred to as "assessee") was a resident having the status of unregistered Firm and the accounting period ending with 31st March, 1981 and 31st March, 1982 respectively for the assessment years 1981-82 and 1982-83, was originally assessed u/s 143(1) which was completed on 20th March, 1982 and 9th September, 1983 respectively on an

income of Rs. 9,320/- and Rs. 9,820/-. Subsequently notice u/s 148 was issued to the assessee on 23rd February, 1987 and 7th January, 1987 respectively. In response to which, return was filed by the assessee on 24th April, 1987 and 6th February, 1987 respectively on net income of Rs. 9,320/- and Rs. 9,820/-. The assessee was enjoying income from manufacturing and sale of harrow and chauff cutter. On 30th July, 1985, a search u/s 132 was conducted on the factory and residential premises of the assessee and various incriminating documents and books were found which were seized, as mentioned in the orders of assessment. Scrutiny of papers revealed the position to the assessing officer as found on comparison respectively for the assessment years as given below:-

As per return	As per annexure	1981-83	1982-83	1981-82	1982-83
-----	-----	-----	-----	-----	G.P. 52,013
16,264	92,013	83,453	N.P.	9,320	9,815
26,320	17,651				
Total	of	Balance	sheet	1,72,526	-
-----	-----	-----	-----	-----	2,14,500

3. From the balance sheet which was filed with the Union Bank of India, it was found by the Assessing Officer that stock of harrow and chauff cutter was of Rs. 82,325/- and Rs. 25,638/- for the assessment year 1981-82 and Rs. 63,700/- and Rs. 24,361/- for the assessment year 1982-83, while as per the balance-sheet submitted to the Department, the assessee showed closing stock respectively of Rs. 12,325/- and Rs. 4,521/- for the assessment year 1981-82 and Rs. 18,381/- and Rs. 2,815/- for the assessment year 1982-83. Thus, the Assessing Officer found an excess stock of Rs. 70,000/- and Rs. 21,117/- respectively for the assessment year 1981-82 and Rs. 45,319/- and Rs. 21,546/- for the assessment year 1982-83. The explanation of the assessee was that the inflated figure in the balance sheet and P & L account was to get the bank credit facility. The A.O. rejected such explanation by viewing that once the assessee had shown himself excess stock in the balance sheet submitted to the bank, there was no reason as to why the lesser stock should be shown to the department besides that the assessee's books of the years in question were not available as confirmed by the assessee. Ultimately, the A. O. added the difference in the stock of Rs. 91,117/- and Rs. 66,865/- to the assessee's income respectively for the assessment year 1981-82 and 1982-83.

4. On appeal, the Appellate Commissioner deleted the additions in question for the reasons that, as the physical presence and counting of stock was neither certified nor was established, there was no reason to disregard the version of the Assessee who could not be fastened only on the ground that he had done certain scribblings which were not in support of any evidence that the assessee had really left with that such stock of harrow and chauff cutter. Discussion in this regard is detailed in paragraphs 6 and 3 respectively of his orders dated 10th January, 1990.

5. Appeal filed by the Revenue before the Tribunal has been dismissed. Tribunal

held as follows:-

"Rival submissions heard and relevant orders read including the case laws relied upon by the parties as well as the concerned pages of the papere book, referred to before us. After doing so we note that the substance in the submission of the assessee has substantial force which was consequently rightly appreciated by the Appellate Commissioner. The CIT (Appeals) found that though, the balance sheet was presented before the bank, neither the bank has physically verified and certified the stock available with the assessee nor even the Assessing Officer has gone to that extent to device and find out the measure to establish that the assessee did have the balance of stock of harrow and chauff cutter as shown in the alleged inflated figures of these two items submitted to the bank. He was convinced that there was no reason to disregard the version of the assessee as the physical presence and accounting of stock was neither certified nor was established. Consequently he viewed that the assessee could not be fastened only for the reason that lie had done certain scribbling which were not in support of any evidence that the assessee had really left with that much stock of harrow and chauff cutter. It is also opined by him that the said fact was demonstrated further by the bank not certifying the actual and physical account of the stock as it had at that point of time and no credit facility was allowed. Therefore, the addition was viewed as unfounded and without any evidence which therefore, was struck down by the CIT (Appeals) The assessee has also relied upon the decision in the case of CIT v. Gopal Rice Mills, Pilibhit 1994 UPTC 939 a copy of which has been furnished in the paper book at page 28 thereof. Our attention was drawn to page 940 of the said report at page 29 of the paper book, where in was observed that the statement to the effect that the stock was inflated in order to avail higher credit facility to help the firm to obtain larger credit should not be considered for which reliance was placed on the decision in the case of Coimbatore Spinning & Weaving Co. Ltd., cited supra, as well as on the decision reported in the case of BIDHU BHUSAN SARCAR (DECEASED) Vs. COMMISSIONER OF Income Tax, CALCUTTA., wherein it was held that the figures furnished by the assessee the State Bank of India for purposes of obtaining an overdraft are not concerned with the actual stock valuation for determining the trade results for purposes of ascertaining the profits and gains derived from that business and that therefore, the addition made by the Assessing Officer was unsustainable. After proper appraisal of the facts and circumstances of the case in the light of the submissions made before us and after a perusal of the relevant pages of the paper book highlighted by the parties concerned as referred to above, we are of the considered opinion that the case laws cited by the Revenue are distinguishable as urged by the assessee, in the instant case and further that we are also convinced with the reasonings assigned by the CIT (Appeals) for coming to the conclusion of giving relief by deleting this addition in question. In this view of the matter, we sustain the order impugned in this regard."

6. We have heard Sri R. K. Upadhayay, learned Standing Counsel appearing on behalf of Revenue. No one appears on behalf of assessee.

7. We have perused the order of Tribunal and the authorities below. We do not find any error in the order of Tribunal.

8. In the present case, C. I. T. (Appeals) and the Tribunal found that though the balance-sheet was presented before the Bank neither the bank has physically verified and certified the stock available with the assessee nor even the Assessing Officer has gone to that extent to device and find out the measure to establish that the assessee did have the balance of stock of harrow and chauff cutter as shown in the alleged inflated figures of these two items submitted to the bank. It was also found that both the opening and closing stock were found inflated in the balance sheet submitted with the Bank. C. I. T. (Appeals) and Tribunal also found that in pursuance of such balance sheet, no facilities were given by the Bank. On the facts and circumstances, C. I. T. (Appeals) and the Tribunal have accepted the explanation of the assessee that the inflated stock in the alleged balance sheet submitted to the Bank was to avail higher credit facility. In our opinion, finding of the Tribunal is the finding of fact based on material on record and can not be said to be perverse or without any material. The decisions of this Court relied upon by the learned Standing Counsel in the case of Swadeshi Cotton Mill Co. Ltd. Vs. Commissioner of Income Tax, is not applicable to the present case. In the said case, the Income Tax Officer gathered information from the Bank about the goods pledged and found that the goods pledged with the bank were in excess of the stock as per books and rejected the book. Discrepancies found was not only in respect of valuation of goods but also in respect of quantum thereof. The explanation given by the assessee with regard to the discrepancies were not accepted. In reference, the Division Bench of this Court has held that the finding of Tribunal was a finding of fact, which could not be questioned is the reference. Reliance placed by the learned Standing Counsel on the decision of Guahati High Court in the case of Dhansiram Agarwalla Vs. Commissioner of Income Tax, is also not applicable. In this case, Income Tax Officer found that loans were being taken from the Bank against goods, fixed assets and fixed deposit Certificates, Mandi type loans to the extent of Rs. 2,52,012.19 and Lock and Key loans to the extent of Rs. 4,16,815.81, the total being Rs. 6,68,828, The Bank was advancing loans to the extent of a maximum of 70 per cent of the value of the securities offered. The assessee, in order to secure loan of Rs. 6,68,828/- had to offer securities to the extent of Rs. 9,95,000/-. As per the balance sheet as on 31.3.1972, security had been offered to the tune of Rs. 6,42,703 that is. closing stock of Rs. 4,17,370/- fixed assets being Rs. 1,73,333/- and fixed deposit certificates being Rs. 50,000/-. On enquiry being made in the course of assessment proceedings for the assessment year 1973-74 with the Bank it was found that the assessee had disclosed stock amounting to Rs. 9,21,507 as on 31.3.1972 and certified the statement of stock to be true and correct On this basis, the Income Tax Officer found suppression of stock to the extent of Rs. 5,04,137/- in the accounts of the assessee. Assessee has not offered any explanation about the said discrepancies and therefore, the difference in the amount has been added as a suppressed income.

9. We also not find any error in the order of Tribunal granting renewal of registration to the Firm. For the reasons stated therein, learned Standing Counsel is not able to pointout any error in the order of Tribunal in this regard.

10. In view of the aforesaid discussions, questions referred to us are answered in affirmative i. e. in favour of the assessee and against the Revenue. However, there shall be no order as to costs.