(2014) 03 MP CK 0020

In the Madhya Pradesh High Court

Case No : I.T. Appeal Nos. 3 and 17 of 2014

Commissioner of Income Tax — APPELLANT

Vs

Deepak Chourasia — RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:
Income Tax Act, 1961 — Section 132, 153A, 260A, 69, 69C

Citation : (2014) 224 TAXMAN 321

Hon'ble Judges : Vimla Jain, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Sanjay Lal, Advocate for the Appellant

Judgement

1. Shri Sanjay Lal, learned counsel for the appellant. Both these appeals have been filed by the department u/s 260A of the income tax Act, 1961 and they arise out of a common order for the assessment years 2008-09 and 2009-10. As the question of law and facts pleaded are the same they are being disposed of by this common order.

2. The concurrent orders passed by the Commissioner of income tax (Appeals) and the Tribunal are challenged in both these appeals.

3. The assessee is an individual dealing in fertilizer, Gutka, Cigarette and manufacturing of pulses. A search and seizure operation u/s 132 of the income tax Act was carried out at the residence and business premises on 22/01/2009, notice u/s 153A of the income tax Act was issued to him for the assessment years 2003-04 to 2008-09 and for the assessment year 2009-10. The assessee filed his return of income on 06/09/2010. The Assessing Officer after taking into consideration all the material and evidence that come on record computed the total income of the assessee for the assessment year 2009-10 at Rs. 2,84,55,990/- after making certain addition under the head of excess stock found in search and amount borrowed on Hundi u/s 69D. Being aggrieved by this order of the Assessing Authority, the assessee preferred an appeal before the

Commissioner income tax (Appeals) and the Commissioner of income tax vide his order dated 30/08/2013 partly allowed the appeal of the assessee. Challenging this order appeals were filed before the Tribunal and the Tribunal having partly allowed the appeals of the Department and having dismissed the appeal of the assessee, this appeal by the department.

4. For the assessment year 2008-09 the Assessing Officer taking into consideration the material that came on record assessed the income for the year 2008-09 at Rs. 27,97,720/- and added certain income on account of undisclosed sales of stock and interest on Hundi loan. When the matter went to the appellate authority, the Commissioner, income tax (Appeals) found that the assessment of stock was made by considering open stock as on 01/04/2008 at Rs. 55,74,475/- and by computing the closing stock without actual referring to the stock in terms of reconciliation statement submitted by the appellant. The Tribunal also considered this aspect and remanded the matter back with the following directions:--

"However, no finding has been recorded by the CIT(A) on the computation of stock as filed in terms of reconciliation statement. In the interest of justice, we set aside this ground to the file of the AO with the direction to take the correct opening stock as on 01/04/2008 at Rs. 55,74,475/- and recompute the closing stock as at the end of the year by incorporating the purchases and sales made during the respective years. The addition is to be confined to the difference so worked out between such calculation and the value of physical stock taken as on the date of search. We direct accordingly."

5. As far as the addition u/s 69 with regard to Hundi were considered in paragraphs No. 22 and 23. The Tribunal has dealt with the matter in the following manner:--

"22. A close scrutiny of LPS-6 reveals that there is no date on this paper. It does not depict about the transaction. No other document or paper about the hundi or about the receipt or the payment was found. On the paper entries found struck down which shows that they are not outstanding loan on a particular date. In the absence of any hundi having been found, no addition u/s. 69D can be made on the basis of this paper. Even while recording the statement during the course of search, the assessee has clearly stated that this is a list of persons to whom the payments are required to be made. Thus, no addition can be made in respect of the liability assumed by the AO on the basis of this paper. The liability may be in respect of loans incurred or for any other purpose. It is pertinent to mention that during the course of search, no undisclosed investment, property or cash was found. Further the assessee has already offered an amount of Rs. 36.40 lakh in various years which was available to the assessee. After giving finding in para 4 page 12 of the appellate order, the CIT(A) has deleted the addition which has not been controverted. Accordingly, we do not find any infirmity in the order of the CIT(A) in deleting the addition made in respect of LPS-13.

23. Since the addition u/s. 69C has already been deleted by the CIT(A), the assessee has also offered the income against the loose papers and as such these amounts cannot be saddled with interest. Since the amount has been accepted by the assessee as its own income, there is no justification in assuming that the assessee has paid interest on such amount. No addition is required on the basis of assuming interest on the amount which has already been accepted by the assessee as his own income."

In view of the reasons given by the Tribunal as reproduced hereinabove, we find that the reasonable approach has been adopted by the Tribunal, in doing so no error of law is committed and therefore, no substantial question of law is arises for consideration now, both these appeals are therefore, dismissed.