(2009) 07 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 844 of 2008 (Q and M) (A.Y. 1999-2000)

Commissioner of Income Tax APPELLANT

Vs

Dhani Ram RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2010) 326 ITR 399

Hon'ble Judges : Daya Chaudhary, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel J.—This appeal has been preferred by the Revenue u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of the Income Tax Appellate Tribunal, Chandigarh, Bench-B in I.T.A. No. 1232/ Chandi/2004 dated 232005 for the assessment year 1999-2000, proposing to raise the following substantial questions of law:

1. Whether in this case the Hon''ble Income Tax Appellate Tribunal was legally right in upholding the decision of the learned Commissioner (Appeals) based on the Hon''ble Gujarat High Court judgment in the case of CIT v. President Industries (2002) 258 ITR 654, when the facts of the present case and the case relied upon were altogether different ?

2. Whether the Hon''ble Income Tax Appellate Tribunal was right in ignoring the fact that sales of apples made by the assessee (though on commission basis) were out of stocks lying with him and the fact that the assessee had made investment in purchase of that stock ?

2. The assessing officer asked the assessee to explain why addition be not made, on account of unaccounted sales to Shri Jagdish Chawla, proprietor M/s. Sai Baba Fruit Co. to the returned income revealed from the documents seized during the survey conducted on 6-11-1998, for the assessment year 1999-2000. The

explanation furnished by the assessee was not accepted by the Assisting Officer and addition of Rs. 1,22,604. It was observed that the assessee had made investment but the same has not been explained and accounts were not produced. 60 per cent, of the peak investment was treated as income.

3. On appeal, the Commissioner (Appeals) partly set aside the addition. It was also held that instead of taking the peak investment as income, the amount of the profits assessed on the basis of commission at the rate of 5 per cent, of the total sales should be added. The Tribunal upheld the said view. The conclusion of the Tribunal is as under:

Thus, it is evident from the claim of the assessing officer himself that the documents seized in the course of survey revealed that the assessee had sold apples on commission basis to M/s. Sai Baba Fruit Co. It is, therefore, not reasonable for the revenue to treat the supply of apples on outright sale against the evidence found in the course of survey. Since the documents seized in the course of survey revealed that the assessee had supplied apples to M/s. Sai Baba Fruit Co. on commission basis, it is reasonable to assess the commission income in respect of the undisclosed turnover of Rs. 6,23,550. This is in addition to the income disclosed by the assessee of Rs. 64,200.

The only issue that survives for our consideration is whether the Commissioner (Appeals) was justified to assess the commission at 5 per cent. only. In the case of Shri Sanjay Chhabra, proprietor M/s. Sanjay Chhabra Traders (supra), the Income Tax Appellate Tribunal, Chandigarh Bench has accepted the commission of 5 per cent, on fruit supply as reasonable.

4. We have heard learned Counsel for the revenue.

5. It is submitted that the investment itself should have been treated as income and not the commission. The judgment of the Gujarat High Court in CIT v. President Industries (2002) 258 ITR 654 relied upon by the Tribunal was distinguishable. The fact remains that the Commissioner (Appeals) on the facts has held that investment could not be treated as income and income will only be the commission earned from sale.

6. In our view, the finding of the Commissioner (Appeals) is a finding on fact. Assessment of the income from the documents which were found during the survey cannot be the subject-matter of any rigid principle. Assessment has to be made on the facts of each case. The findings of the Commissioner (Appeals) and the Tribunal are, thus, findings on fact.

7. No substantial question of law arises.

8. The appeal is dismissed.

