

(2008) 01 RAJ CK 0025
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Dr. A.P. Bahal

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Citation : (2008) 01 RAJ CK 0025

Hon'ble Judges : N.P. Gupta, J;Deo Narayan Thanvi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

By The Court

1. This is revenue's appeal against the order of the learned Tribunal dated 19-9-2003, Annex. 3, passed in appeal No. 365 of 1998, relating to assessment year 1994-95.

2. The appeal was admitted on 9-12-2004, by framing the following substantial question of law:

Whether in the facts and circumstances, when the books of account maintained by the assessee were rejected u/s 145 and the assessment was made by the assessing officer to the best of his judgment, the Tribunal was justified in interfering with computation of income made by the assessing officer to the best of judgment by deleting all additions merely on the basis that the exact material in support of the assessment was not brought on record by the assessing officer ?

The assessing officer, in this case, has rejected the books of account of the assessee, and had made an assessment u/s 145 (sic- 144) i.e. best judgment assessment, and made certain additions under different heads, like outdoor patients income, investigation income, minor operation income, delivery ease income, major operations income, bed charges, and so on.

In appeal, the learned Commissioner (Appeals) deleted certain additions, under the heads of outdoor patients, minor operations, delivery cases, major

operations, and bed charges etc., by finding such additions, being not justified, as no material in support of this finding was brought on record. Likewise, it was found that no attempt was made by the assessee to suppress the professional receipts, by not maintaining indoor patient registers. For deleting other additions also, detailed findings were given by the learned Commissioner (Appeals). Thus, the appeal of the assessee was allowed.

Against that order, the revenue went in appeal before the Tribunal, and the learned Tribunal found that no material could be brought on record by the assessing officer to justify the additions to the effect, as to whether the receipts have been suppressed, and the additions have been made on the estimate basis, without any material in his possession. Then, accepting the reasons given by the assessee, it was found by the learned Tribunal, that the additions were rightly deleted by the learned Commissioner (Appeals).

We have heard the learned Counsel for both the parties. The learned Counsel for the revenue submitted that the learned Commissioner (Appeals), so also the learned Tribunal have gone wrong in expecting the existence of positive material with the assessing officer, while making assessment u/s 145 (sic- 144). The learned Counsel for the assessee has relied upon the judgment of this Court in Commissioner of Income Tax Vs. Gotan Lime Khanij Udhyog, wherein it has been held that Section 145 only provides the basis, on which computation of income is to be made for the purpose of determining the amount of tax. The provision, by itself, does not deal with addition or deletion to the income. Therefore, mere rejection of, or some deficiency in, the books of account, would not mean that it must necessarily lead to additions to the returned income. It has also been held therein that the conclusions arrived at in this regard, are findings of fact.

In that case, the assessee was a dealer in marble. The assessing officer had found that the trading accounts of the assessee were not backed up with quantitative and qualitative stock details, and there was considerable fall in the GP rate. Invoking the provisions of Section 145(1), the assessing officer was not convinced by the reason given by the assessee that the assessee had employed a method of accounting regularly and an addition of Rs. 3,34,960 was made, by increasing GP rate. The Commissioner (Appeals) in appeal, while substantially accepting the explanation of the assessee for reduction in the GP rate, was of the view that the addition was on the higher side, and sustained an addition of Rs. 34,000 only, to cover up the possible leakage in the books of account. The Tribunal had upheld the invocation of the provisions of Section 145(1), but did not sustain the additions retained by the Commissioner (Appeals). And this Court, in reference, held the finding to be finding of fact.

Having gone through this judgment and after hearing learned Counsel for the revenue also, in our view, the question, as to whether the additions were rightly deleted by the Commissioner (Appeals) and the Tribunal, is a pure question of fact and cannot be said to be tantamounting to any substantial question of law.

The question, framed by this Court on 9-12-2004, is therefore answered against the revenue, and in favour of the assessee. The appeal is consequently dismissed.