

(2015) 02 BOM CK 0179
In the Bombay High Court
Case No : Income Tax Appeal No. 313 of 2013

Commissioner of Income Tax

APPELLANT

Vs

Hariram Bhambhani

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Income Tax Act, 1961 — Section 133A, 260A, 69C

Citation : (2015) 02 BOM CK 0179

Hon'ble Judges : G.S. Kulkarni, J.; M.S. Sanklecha, J.

Bench : Division Bench

Advocate : Arvind Pinto, for the Appellant

Judgement

1. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act), challenges the order dated 8th August, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2006-07.

2. The Revenue has formulated the following question of law for our consideration:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) in which he had directed the Assessing Officer to tax 4% net profit on unaccounted sales of Rs.35 lakhs even though no evidence of unaccounted purchases/ expenses against such unaccounted sales was detected at the time of survey?" 3. On 21st September, 2006, there was a survey operation under Section 133A of the Act on the Respondent-Assessee. During the course of the survey, it was noticed that the Respondent Assessee has not accounted some of the sales in the total turnover. In the statement recorded at the time of survey, the Director of Respondent Assessee declared a sum of Rs.35 lakhs should be offered to tax. However, thereafter, Respondent Assessee explained the statement as follows:

"Please refer to question No. 11 in the statement given by the director wherein it was declared that the sum of Rs.35 lakhs would be offered to tax for A. Y.

2005-06. However, bill amounting to Rs.14,97,970/- was raised on 31.3.2006 on M/s. Global Services Middle East for supply of provision time to time on Vesser "MV Pooja 1 and MV Stephanie. Copy of the Sale invoice for same made to M/s. Global Services Middle East for Rs.14,97,970 is enclosed herewith.

Also sum of Rs.20,00,000/- was towards sales in M/s. Global (India) Hospitality Services Pvt. Ltd. and was wrongly mentioned in declaration given by the director as turnover belonging to Royal Marine Co. Further, we wish to add that the statement was made by Mr. Hariram Bhambhani who is a matriculate in vernacular language and is not aware of the intricacies and implications of the Income Tax Act and Rules and statement made by him."

4. The Respondent-Assessee did not accept the Appellant's above explanation, seeking to reconcile the statement made during the course of survey and facts actually existing. Accordingly, the entire amount of Rs.35 lakhs was brought to tax under the head "income from undisclosed sale".

5. Being aggrieved, Respondent-Assessee filed an Appeal before the CIT(A). In its order, the CIT(A) recorded that during the course of survey, no unaccounted invoices were impounded. Although there was unaccounted sale bills which were not recorded in the books of account on the date of survey, no document was impounded. However, later in its return filed with the Revenue, it declared turn over at Rs.3.27 Crores, showing a net profit of Rs.36.76 lakhs. The CIT(A) relied upon its decision to hold that the Assessing Officer cannot add the amount of Rs.35 lakhs only on the statement made without considering the surrounding circumstances and evidence to uphold the addition. In the circumstances, the CIT(A) held that in the facts of the case, that only 4% being the profit earned on sales of Rs.35 lakhs can be added to net profit of the applicant. Therefore, only Rs.1.40 lakhs was the profit on unaccounted sales which could be added. Thus, the balance addition of Rs.33.63 lakhs was deleted.

6. On further Appeal, the Tribunal by the impugned order held that the entire sales which are unaccounted cannot be undisclosed income of the assessee, particularly as the purchase had been accounted for. It was held that only net profit which would arise on such unaccounted sales can rightly be taken as the amount which could be added to the Respondent-Assessee's income for the purpose of tax.

7. The grievance of the Revenue is that Section 69C of the Act is to be invoked and entire amount of undisclosed sales has to be brought to tax. We are unable to appreciate how Section 69C of the Act which speaks of unexplained expenditure is all at relevant for this appeal. We are not concerned with any unexplained expenditure in this case.

8. In any view of the matter, the CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Thus, in the above view, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the

profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. The view taken by the authorities is a reasonable and a possible view. Thus, no substantial question of law arises for our consideration.

9. Appeal dismissed. No order as to costs.