(1982) 09 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Appeal No. 216 of 1980

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

HIRJI BHARMAL. — RESPONDENT

Date of Decision : 16-09-1982

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1983) 34 CTR 312 : (1983) 14 TAXMAN 507

Hon'ble Judges : Shukla, J

Bench : Division Bench

Judgement

INDORE BENCH

Shukla, J. - This is an application by the CIT, Bhopal u/s 256(2) of the IT Act, 1961, seeking a direction from this court to the Appellate Tribunal, Indore to refer the following questions for decision of this court :

(1) Whether, the Tribunal was justified in upholding the CIT (A)s order deleting the addition of Rs. 1,17,505 on the ground that the tax effect in the subsequent years after set off of enhanced value of closing stock of this year would off set the tax liability of this year on account of revaluation of stocks ?

(2) Whether, the Tribunal was right in law in upholding the CIT (A)s order deleting the addition of Rs. 1,17,505 made by the ITO to the disclosed profits for under-valuation of closing stock of cotton especially when it (the Tribunal) observed that the matter required further probe and revaluation of the closing stock after ascertaining its correct market value ?

2. Assessee, a partnership firm, filed its return for asst. yr. 1974-75. The assessee deals in cotton business. The details of closing stock were filed by the assessee and it valued the same at the market price is obtaining on the last date of the accounting year. The ITO revalued the closing stock and made an addition.

3. Whether the matter was taken in appeal, the CIT (Appeals) observed that the

assessee followed the practice of valuation of the closing stock at the market price. He also noted that there could not be any benefit to the revenue if the closing stock for the assessment year in question was valued at a higher price, i.e., purchase because the same price will have to be considered while valuing the opening stock of the next assessment year. He, therefore, accepted the basis of valuation of the closing stock as made by the assessee and deleted the addition. The department went in appeal against this order which was dismissed by the Appellate Tribunal.

4. Perusal of the orders passed by the ITO, CIT (Appeals) and the Appellate Tribunal shows clearly that the Appellate Tribunal recorded a finding of the fact that the assessee followed the practice of valuation of the closing stock on market price and it was entirely his choice to do so because this valuation and the income therefrom was only notional and not real. The finding of the Appellate Tribunal about the valuation of the closing stock and the method consistently adopted by the assessee in this behalf is clearly one of fact and no question of law arises therefrom.

5. The application is, therefore, dismissed. There will be no order as to costs.