

(2015) 09 JH CK 0032
In the Jharkhand High Court
Case No : T.A. 36 of 2007

Commissioner of Income Tax

APPELLANT

Vs

J. Ram and Sons

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Income Tax Act, 1961 — Section 69

Citation : (2015) 09 JH CK 0032

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Deepak Roshan, Advocate, for the Appellant; B. Poddar, Advocate, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—In this Tax Appeal the following questions of law have been involved:

"i) Whether on the facts and in the circumstances of the case, the ITAT was justified in upholding the deletion of additions of Rs. 17,64,699/- u/s. 69 of the Income Tax Act, 1961 as unexplained investment which has conclusively been established by the A.O. with evidence and material on record?

ii) Whether on the facts and in the circumstances of the case, the ITAT was justified in upholding the assessee's argument of " peak credit" without referring it to A.O. for proper examination of books of accounts to arrive at correct working of "peak credit"?

iii) Whether on the facts and in the circumstances of the case, the ITAT was justified in upholding the G.P. of 6% on undisclosed purchases whereas the assessee has himself shown a G.P. Of 15% in all the Assessment Years?

iv) Whether on the facts and in the circumstances of the case the ITAT examined assessment records and return filed by the assessee to show that the assessing officer is not right in treating the addition of Rs. 17,64,699/- u/s. 69 as unexplained investment?

v) Whether on the facts and in the circumstances of the case the order passed by ITAT is perverse?"

2. Counsel for the appellant submitted that the respondent- assessee purchased several batteries from M/s. Radiohms Agencies, Patna worth Rs. 17,64,699/- out of which only Rs. 4,91,270/- were mentioned in the books of accounts and, therefore, Assessing officer has added income of Rs. 12,73,429/- as unexplained investment u/s. 69 of the Income Tax Act. Moreover, the Assessing Officer calculated 15% gross profit on the aforesaid amount. Against this order, respondent preferred an Appeal before the Commissioner (Appeals) and the Appellate Authority observed that the batteries were not purchased by giving cash amount, but, it was on a credit basis and percentage of profit was reduced to 6% for the assessment year 1997-98. Against this order of CIT (Appeal), an Appeal was preferred by this appellant before the Income Tax Appellate Tribunal and the same was dismissed and the order passed by the CIT (Appeal) has been confirmed by observing in paragraph Nos. 6 and 6.1 thereof that looking to the statement of Account it appears that the goods were sold to the respondent - assessee on a credit basis. This aspect of the matter has not properly been appreciated by the Assessing officer and secondly profit which has been finalized by CIT (Appeal) @ 6% has also been upheld by the Income Tax Appellate Tribunal.

3. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that the batteries were never purchased by the respondent-assessee on one time payment, but, it was purchased on credit basis and hence, the amount which has been added in the income of the respondent-assessee which is Rs. 12,73,429/- as unexplained investment, could not have been added by the Assessing officer. So far as, rate of net profit is concerned, Gross profit rate fixed by Assessing Officer @ 15% which has been reduced by the Commissioner (Appeal) as a net profit @ 6%. This is also correct because the respondent has sold the batteries on a wholesale basis. The percent of the profit is much lessor because the prices of the batteries were also fixed. This aspect of the matter has been properly appreciated by the Commissioner (Appeal) as well as by the Income Tax Appellate Tribunal. It has also been rightly observed in paragraph Nos. 6 and 6.1 of the order passed by the Income Tax Appellate Tribunal which reads as under:

"6. We have considered the rival submissions of the parties and perused the materials available on record including the orders of authorities below and the papers filed in the paper book. The AO in this case has included the entire purchases made as unexplained investment u/s. 69 and estimated the income from this business. It is undisputed that the AO has not given the basis on which the entire purchases were treated unexplained. On careful analysis of the orders of the authorities below and the details of statement of accounts of the supplier M/s. Radiohms Agencies, Patna placed in the paper book at pages 2 to 15, we find that the supplier in his statement of accounts have confirmed that the goods

were sold to the assessee on credit basis. The Ld. CIT(A) while deleting the addition on this account has observed that the AO has no reasoning at all to treat entire purchases as unexplained investment. It is purely on imagination and without application of mind. As such, we find no infirmity in the findings of the Ld. CIT(A). Accordingly, we upheld the order of the Ld. CIT(A) and dismiss the appeals of the revenue on this ground.

Now coming to the addition on account of estimation of income earned by the assessee from these undisclosed transactions. We, after careful consideration of the facts and circumstances of the case and the orders of the Ld. CIT(A), find that the huge transactions had taken by the assessee out of the books of accounts and was selling the product keeping a margin of 3.5 to 4.5% after deducting packing and delivery charges. Since the business of batteries was wholesale business of the assessee, 15% income estimated by the AO is not justifiable. Ld. CIT(A) in appeal has observed that the assessee had incurred other miscellaneous expenditure for running business apart from packing & delivery. Considering these facts and circumstantial evidence, we are of the view that the direction of the Ld. CIT(A) to calculate the net profit @ 6% (A.Y. 1996-97 & 1997-98) and @ 7% (A.Y. 1998-99) of the total purchases is reasonable and justified. Therefore, we are not inclined to interfere with the findings of the Ld. CIT(A) and the same is upheld."

(Emphasis supplied)

The order passed by the Income Tax Appellate Tribunal that the goods were purchased on credit basis looking to the statement of accounts, average margin of profit is 3.5 to 4.5 and hence, 6% net profit fixed for the year 1996-97 and for the Assessment Year 1997-98 is also absolutely reasonable. Moreover, the appeal preferred by this appellant for the Assessment Year 1996-97 has already been dismissed by the Division Bench of this Court in T.A. No. 34 of 2007 vide order dated 19th September, 2012.

4. In view of these facts there are no substantial questions of law involved in this Tax Appeal and hence, the same is hereby dismissed.