(2001) 03 RAJ CK 0103

In the Rajasthan High Court

Case No : DB IT Ref. Application No. 23 of 1997 16 March 2001 A. Y. 1986-87

Commissioner of Income Tax APPELLANT

Vs

Kamadar and Co. RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (2001) 168 CTR 65 : (2002) 120 TAXMAN 181

Hon'ble Judges : Rajesh Balia, J;H.R. Panwar, J

Bench : Full Bench

Advocate : Sundeep Bhandawat, for the Revenue and Anjay Kothari, for the Assessee, for the Appellant;

Judgement

Rajesh Balia, J.

Heard learned counsel for the parties.

2. This is an application u/s 256(2) of the Income Tax Act, 1961, requiring this court to issue a direction to the Tribunal Appellate, Jaipur Bench, Jaipur to state the case and refer the following question of law said to be arising out of the Tribunal''s order passed in ITA No. 1578/Jp/94 relating to assessment year 1986-87 decided on 5-3-1995, in the case of respondent- assessee. The question requires to be referred to this court reads as under :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in directing the assessing officer to tax the gross profit on the unexplained sales rather than directing to tax the whole unexplained sales, specially when the Tribunal itself has confirmed that sales to the extent of Rs. 1,03,045 was suppressed ?"

The application of the revenue for raising this question and referring to this court was rejected by the Tribunal by its order dated 19-3-1996, holding that any exercise based on appreciation of evidence and no interference was called for at any stage and, therefore, no referable question of law arose out of the Tribunal''s appellate order.

3. We have heard the learned counsel for the parties.

4. Mr. Bhandawat urged that the account of suppress sales would include the amount of purchases of the goods which have been shown by the assessee and not disclosed in his books of accounts and, therefore, higher gross profit rate was applied in estimating income on best of his judgment, inasmuch as, the assessee must have not shown the said purchases also. We are unable to fathom any foundation for this contention in the order of the Tribunal. The orders by the Income Tax Officer or by the Tribunal nowhere referred to suppressed purchases to be a part of suppressed sales, on which, the gross profit rate of 43 per cent was applied to estimate the income arising out of such sales. No such question of fact which does not arise out of the proceedings can be permitted to be raised.

In fact the additions were made in the income of the assessee on three counts by the Income Tax Officer.

So far as, relevant for the present purposes, are concerned Rs. 90,836 were added as gross profit on account of suppressed sales. This amount represented the difference between the amount of the alleged under invoicing of the sale price in respect of addition. The Tribunal found that the assessee has properly explained along with supportive material that the assessee has in fact billed lesser amount of consideration because the purchasers have accepted lesser amount of goods, therefore, this could not have been added in the income. This part of the finding has not been made subject-matter of the question sought to be referred to this court. It appears that this kind of question was made subject-matter of Income Tax Reference Appln. No. 42/98 against the very same period and that reference application has been dismissed by the Division Bench of this court on 13-8-1999, by holding that no question of law as the finding has been reached at the appreciation of evidence.

5. The second addition in the income has been made on account of applying 43 per cent gross profit rate on the alleged undisclosed sales amounting to Rs. 3,37,113 in respect of this, the assessee has pointed out, firstly that the assumption on the basis of 43 per cent gross profit rate applied was erroneous. Reliance was placed on the gross profit rate in the case of petitioner applied by the revenue for last 11 years for the assessment years 1981-82 to 1991-92 which ranged between 14.41 per cent to 24.01 per cent. The maximum 24.01 per cent relates to the assessment year 1989-90 which subsequently, has been 42 per cent in the assessment year 1991-92. The second circumstance which the assessee has pointed out before the Tribunal was that the assessing authority has wrongly placed reliance on two separate account books whom one of them pertains to the accounting year ending on 30-6-1986, relating to the assessment year 1987-88, that is to say it was relevant for assessment subsequent to the assessment year in question. He also placed on record the figures of gross profit rate accepted by the assessing officer, in the petitioner''s case for last number of

years varying from minimum of 14.41 per cent to maximum of 24.51 per cent and held that in the peculiar circumstance of the case, that it is reasonable to accept the quantum of suppressed sales at the figure determined by the sales-tax authorities while determining the levy of sales-tax, under that Act and looking to the material on record, directed to apply 19 per cent as gross profit rate.

6. In the aforesaid circumstances, it is clear that the finding about the quantum of suppressed sales as well as the gross profit rate to be applied was founded on appreciation of evidence and these are findings of fact, which do not give rise to any question of law and, therefore, the application was rightly rejected and we do not find that the order of the Tribunal u/s 256(2) is erroneous in any manner.

The application accordingly fails and rejected with no order as to costs.

