
(2004) 09 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 124 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Mangal Engineering Works

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2005) 272 ITR 318 : (2006) 150 TAXMAN 258

Hon'ble Judges : N.K. Sud, J;Kiran Anand Lal, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant; None, for the Respondent

Judgement

N.K. Sud J.—The Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act"), against the order of the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (for short "the Tribunal"), dated November 14, 2003, relating to the assessment year 1996-97 whereby the Revenue's contention that the income of the assessee be determined by application of a net profit rate of 20 per cent. has been rejected.

2. The Assessing Officer had rejected the books of the assessee and determined the income from bakery business by applying a net profit rate of 20 per cent, to the declared sales of Rs. 2,28,60,250. The basis for applying a net profit rate of 20 per cent, was that the assessee had made a declaration u/s 68(2) of the Voluntary Disclosure of Income Scheme, 1997, in which a sum of Rs. 5 lakhs had been offered for assessment on undeclared sale of Rs. 19,10,000 made through one Shri Jai Parkash, Proprietor, M/s. National Engineering Works, Patiala.

3. The Tribunal has disapproved this approach. Although the rejection of books of account has been upheld but it has been observed that the income had to be determined on the basis of the past history. The Tribunal, referring to the gross profit rate applied and accepted by the Department in the earlier years, held that the Commissioner of Income Tax (Appeals) was justified in reducing the addition

by applying the gross profit rate of 22 per cent, as per the past history of the case. Relevant findings are contained in para. 9 of the order, which reads as under :

"9. The next question that arises is about estimation of income of the assessee. Even if book results are rejected, the Assessing Officer is duty bound to make a fair and reasonable estimate of income based on evidence and material on record. For this purpose, the past history of the case is the best guide for determining the income of the assessee. We have referred to the past history of the case and found that never in the past the Assessing Officer had estimated the income by applying the net profit rate. The facts noted by the Commissioner of Income Tax (Appeals) in para. 2.3 of the impugned order show that the assessee had declared GP rate varying from 21 per cent, to 21.89 per cent, for the assessment years 1990-91 to 1994-95. The Assessing Officer estimated the income by applying the GP rate varying from 22 per cent, to 24 per cent., which on appeals was reduced to 22 per cent, on the returned sales. Therefore, estimation of income by applying the net profit rate of 20 per cent, does not bear any relationship with the past history of the case. The assessee did maintain the books of account and debited various expenses in the profit and loss account. Nowhere in the assessment order the Assessing Officer has pointed out any defect in the various expenses debited to the profit and loss account. The Assessing Officer can be justified in applying the net profit rate of 20 per cent, only if on the basis of entries in the books of account he comes to the conclusion that the assessee had inflated certain expenses or these expenses were not fully supported by bills and vouchers. No such finding is recorded in the assessment order. Thus, we are of the opinion that estimating the income by applying the net profit rate of 20 per cent, in respect of the declared sales without pointing out any instance of inflation of expenses is highly arbitrary, excessive and unjustified. As regards income of Rs. 5 lakhs declared on the undisclosed sales of Rs. 19,10,000, we find that the same is also based on estimate. The Assessing Officer has not made any addition by treating the deposits as unexplained u/s 68. In other words, the Assessing Officer has accepted the fact that these were the sale proceeds of undisclosed sales. Even though there was no evidence, the Assessing Officer had allowed deduction in respect of expenses to the extent of 75 per cent. But the same relates to undisclosed sales. The same criteria cannot be applied to the declared sales without pointing out instances of unverifiable expenses or not supported by bills and vouchers. Therefore, the criteria should have been applied to the declared sales. Having regard to these facts and circumstances of the case, we are of the considered opinion the Commissioner of Income Tax (Appeals) was justified in reducing the addition by applying the GP rate of 22 per cent, based on GP rates of earlier assessment years."

4. Dr. N. L. Sharda, learned counsel for the Revenue, reiterated the stand taken before the authorities below.

5. We are unable to accept this contention. The amount of Rs. 5 lakhs

surrendered under the Voluntary Disclosure of Income Scheme was not only in respect of profits earned on the sales of Rs. 19,10,000. In the declaration filed under the Voluntary Disclosure Scheme, it had been clearly stated that the declared amount covered the gross margin after including fixed expenses. It is, therefore, clear that the declared amount was not entirely on account of income from undisclosed sales although it covered the said income also. Thus, it could not be a guide for determining the rate applicable to the sales as declared in the books of account. In our view, the Tribunal was justified in upholding the application of gross profit rate of 22 per cent, instead of application of net profit rate for which there was no basis. The findings recorded by the Tribunal are pure findings of facts. What should be the gross profit rate in a given case does not give rise to any legal issue. We are, therefore, satisfied that no substantial question of law arises out of the order of the Tribunal for consideration by this court.

6. Accordingly, the appeal is dismissed in limine.