(2008) 03 JH CK 0089

In the Jharkhand High Court

Commissioner of Income Tax APPELLANT

Vs

Multi Tech Auto Ltd. RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:
Income Tax Act, 1961 — Section 131, 158BC, 251, 260A

Citation : (2008) 301 ITR 73 : (2008) 2 JCR 433

Hon'ble Judges : M.Y. Eqbal, J;Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal u/s 260A of the Income Tax Act by the Revenue is directed against the order dated 13.12.2006 passed by the Income Tax Appellate Tribunal is IT. (SS) No. 26/PAT/2Q06 for the assessment year, block period 1.4.1987 to 21.10.1997, whereby the appeal was allowed and the order passed by the Tribunal is set aside.

2. It appears that a search and seizure was carried put under the provision of Section 131(1) of the Income Tax in the premises of the respondent-assessee and associated persons including Director of the Company. In course of search, some floppy and its print out along with other papers were found. The Assessing Officer assessed the income at Rs. 1,69,20,143/-. Out of these, addition of Rs. 92,31,664/- was made on the basis of seized documents and Rs. 63,88,479/- was added on account of information contained in floppy referred to as floppy mal account and an addition of Rs. 13,00,000/- was made from credit entry in the account of M/s. Shyam Engineering. The assessee preferred appeal before the Commissioner of Income Tax (Appeal) who in terms of order dated 15.10.2001 passed in Appeal No. 248/JSR/99-2000 set aside the assessment and remanded back the matter for decision afresh in the light of the direction given in the said order. In compliance of the aforesaid direction, the Assessing Officer passed fresh order dated " 28.3.2002 u/s 158BC/251 determining the income at Rs. 60,88,423/-. In the said assessment, an addition of Rs.

46,70,313/- and Rs. 14,81,107/- was made on the strength of seized document. The assessee again filed appeal before the Commissioner of Income Tax (Appeal) who in terms of order dated 26.9.2003 passed in Appeal No. 31/JSR/2002-03 has again set aside the assessment order after observing that specific direction given to the Assessing Officer were not followed. Against the aforesaid order of Commissioner of Income Tax (Appeal), the Revenue went in appeal before the Income Tax Appellate Tribunal which was dismissed by passing the impugned order. Hence, this appeal.

3. We have heard Mr. K.K. Jhunjhunwala, learned Counsel appearing for the appellant and Mr. Binod Poddar. learned Counsel appearing for the respondent. From perusal of the assessment order as also the order passed in appeal, it is apparent that the authorities have considered the facts of the case in detail and gave reasonings for arriving at the conclusion. The Commissioner of Income Tax (Appeal) has taken up all the issues separately and recorded findings on those issues. Curiously enough, the Tribunal after recording the case of the parties and submissions made therein, has come to the following conclusion:

On careful analysis of the orders of the authorities below with reference to the contentions of the rival parties, it is noticed that the amount of additions are based mainly on loose sheet marked P-70 of bunch 11-21 found and seized by the search party, but at the same time it is also apparent that the assessee has accepted and offered for taxation a sum of Rs. 14,42,892/- as undisclosed income by filing the block period return. Thus, it is found that the amount of additions is much less than that of offered for taxation. Even assuming but not admitting that the entries are found in the document marked P-70 of bunch 11-21 found during the course of search and seizure operation but they are not supported by any independent material. Thus, we find that the amount of addition is Rs. 5,91,008/- (Rs. 2,94,605+Rs. 2,96,403) whereas the amount offered for taxation is Rs. 14,41,892/-. Under these circumstances, we find the addition based solely on loose sheet marked P-70 of bunch 11-21 found and seized during the course of search and not supported by any independent evidence is unsustainable in the eye of law. Accordingly, we delete the additions made by the Assessing Officer as sustained by the learned Commissioner of Income Tax (Appeals) by allowing the appeal of the assessee.

In the result, the appeal of the asses-see is allowed.

4. Evidently, therefore, the Tribunal neither discussed all the issues nor met the reasonings given by the Assessing Authority and the Appellate Authority for coming to the conclusion. In our view, therefore, the matter needs re-consideration by the Tribunal, so that the Tribunal shall pass reasoned order in accordance with law. The impugned order passed by the Tribunal, therefore, cannot be sustained in law.

5. For the reasons aforesaid, this appeal is allowed and the impugned order passed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi is set aside

and the matter is remanded back to the Tribunal for deciding the appeal afresh by passing reasoned order after meeting the reasonings given by the Assessing Authority and the Appellate Authority.

D.K. Sinha, J.

6. I agree.

