(2008) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Pawan Kumar RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:
Income Tax Act, 1961 — Section 143, 145, 260A

Citation : (2009) 316 ITR 324

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, 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 Tribunal, Chandigarh Bench ''A, Chandigarh, passed in ITA No. 146/Chd/2005 dated 20-4-2007 for the assessment year 2001-02 raising the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the learned Tribunal is right in restricting the addition to sales to the extent of Rs. 1,44,000 found unrecorded in the regular account books than determination of sale by the assessing officer at Rs. 67,66,725 particularly when the books of account were not authentic and liable to be rejected u/s 145(3) of the Act more particularly in view of the judgment of Hon''ble Supreme Court in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore,

(ii) Whether, on the facts and in the circumstances of the case, the learned Tribunal is justified in directing to apply a GP rate of 10 per cent as against 14 per cent applied by the assessing officer without appreciating observations in para 11.2 of the order that non-entry of sales made to Shri Saurav Garg it can be held that same sales were made outside the books of account which could effect the GP rate also?

(iii) Whether on the facts and circumstances of the case, the learned Tribunal is justified in restricting the addition of unexplained investment to Rs. 5,000 as against Rs. 80,000 made by the assessing officer without appreciating that the unrecorded sales were to the extent of Rs. 29,86,064 (67,66,725-37.80,661) and not only Rs. 1,44,000 and for effecting these sales of bricks the investment required in their manufacturing was much more?

(iv) Whether on the facts and in the circumstances of the case, the order passed by the learned Tribunal dated 20-4-2007 is perverse as the findings recorded by the learned Tribunal are contrary to the evidence on record?

2. The assessee was engaged in the business of manufacturing and sale of bricks under the trade name of M/s Sadhu Ram Pawan Kumar & Co. BKO in his individual capacity. He was also enjoying share income as a partner, from M/s Garg Bricks Co. The assessee filed return of income on 27-9-2001 showing total income of Rs. 74,331. The return of income was accompanied by audit report in Form No. 3CD comprising of balance sheet, trading account, P&L a/c, coal account, capital account of the proprietor and other details. The return of income was processed u/s 143(1)(a) of Income Tax Act at the returned income. Thereafter the case was selected for scrutiny. During the course of assessment proceedings the assessing officer noticed that one Shri Gaurav Garg had shown purchases of 1,28,000 number of bricks on credit basis for a sale consideration of Rs. 1,44,000 from the assessee. The aforesaid information was put to verification. After that the assessing officer came to the conclusion that the assessee had been manufacturing the bricks and selling them outside the books and as such sales were not being disclosed in the return of Income Tax. The assessing officer also noticed certain more discrepancies. Assessing Officer worked out the number of bricks at 57,75,000. The assessing officer also accepted the figure of opening and closing stock disclosed by the assessing officer (sic.-assessee) and thus the same had been worked out to Rs. 67,66,725. The assessing officer applied GP rate of 14 per cent on the aforesaid estimated sale of Rs. 67,66,725. In this manner, GP was worked out at Rs. 9,47,340 as against returned GP of Rs. 3,13,568 and the addition of Rs. 6,33,772 was thus made.

3. The assessee filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), Hisar after considering the submissions of both the parties opined that the assessee sold the bricks outside the books of account and thus, the books of account produced before the assessing officer deserves to be rejected and held that Section 145(3) of the Act was applicable. The Commissioner (Appeals), Hisar was also of the opinion that the estimate of bricks produced at 57,75,000 was quite justified. The application of GP rate of 14 per cent was also held to be reasonable. Accordingly, the addition of Rs. 6,33,772 was confirmed and dismissed the appeal vide order dated 18-11-2004.

4. The assessee filed appeal before the Tribunal. The Tribunal vide impugned order dated 20-4-2007 partly allowed the appeal filed by the assessee and

instead of 14 per cent applied GP rate at 10 per cent. The Tribunal also made an addition of Rs. 1,44,000 for the sales disclosed by the assessee.

5. We have heard Sh. Yogesh Putney, advocate for the revenue and perused the record.

6. Counsel for the revenue has vehemently argued that the estimate of GP rate of 14 per cent as applied by the assessing officer was quite reasonable in the facts and circumstances of the case and the Tribunal wrongly ordered the reduction at 10 per cent. Learned Counsel has also argued that in view of the details, as noticed and. highlighted in the assessment order, the estimate of sales made by the assessing officer was quite reasonable and justified and therefore, the Tribunal has wrongly accepted the sales shown by the assessee.

7. After hearing the learned Counsel, we find no infirmity in the impugned order of the Tribunal. The Tribunal has given a pure finding of fact on all the issues. While reducing the GP rate, the Tribunal has noticed that neither the assessee nor the assessing officer has given any instance of the comparable case belonging to the same vicinity where the brick kiln of the assessee was situated. The cases relied upon by the assessing officer belong to different Districts and States and the location of the brick kiln was far away from the site of the assessee and keeping in view the totality of the facts, the Tribunal held that the GP rate of 14 per cent as applied by the assessing officer was highly excessive and without any basis. The GP rate of 10 per cent as applied by the Tribunal was after considering the past history and the GP rate in subsequent years. Thus, no substantial question of law arises for determination of this court in the present appeal and the same is hereby dismissed.