
(2001) 10 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : ITC No"s. 23, 24 and 66 of 1999

Commissioner of Income Tax	Vs	APPELLANT
Ram Piyara Satish Kumar		RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (2003) 132 TAXMAN 20

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Appellant; A.K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—These are three petitions u/s 256(2) of the income tax Act, 1961. The Revenue maintains that the following three questions of law arise for consideration and that the income tax Appellate Tribunal be directed to refer these for the opinion of this Court : " 1. Whether the income tax Appellate Tribunal erred in law in upholding the order of the learned Commissioner of income tax (Appeals) with regard to the deletion of addition on account of investment in purchase price, when the order of the Commissioner of income tax (Appeals) is itself based on incorrect facts and presumption of law and facts under the Evidence Act?

2. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in not setting aside the order of the Commissioner of income tax (Appeals) based on incorrect facts and presumption?

3. Whether the income tax Appellate Tribunal has erred in law in not upholding any addition on account of purchase price paid for unrecorded purchases even when accepting that the assessee must have made some investment therein?"

Notice of these petitions given to the respondent-assessee.

2. Learned counsel for the parties have been heard.

3. Mr. R.P. Sawhney, learned counsel for the Revenue, contends that the assessee was not maintaining his accounts properly. Thus, the Assessing Officer had made certain additions in the declared trading results. These were wrongly reduced by the Commissioner of income tax (Appeals). This order was later on affirmed by the Tribunal. Thus, counsel submits that the Tribunal should be directed to make the reference to this Court.

4. On the other hand, Mr. Mittal, appearing for the assessee, has submitted that on the material on record the additions were not justified. After consideration of the matter, the Commissioner had partly accepted the assessee's claim. The order of the appellate authority having been accepted by the Tribunal, no question of law arises for the consideration of this Court.

5. After consideration of the matter, we find that 36 appeals had been consolidated by the Tribunal and decided by a common order of May 7, 1997. By this order the Tribunal had affirmed the order passed by the Commissioner of income tax (Appeals). The Department filed petitions u/s 256(1) of the Act in only three cases relating to the present assessee. No petitions for reference were filed by the Revenue in the remaining 33 cases. Thus, while considering the petitions u/s 256(1) of the Act, the Tribunal, inter alia, noticed that "the Department has not filed any reference application in the cases of all other dealers...." Still further, the Tribunal also noticed that it was "on the basis of appreciation of entire relevant facts and circumstances" that "the Commissioner of income tax (Appeals) has rightly directed the Assessing Officer to sustain the addition in respect of unexplained investment at two per cent of the total value of unrecorded sales of the unrecorded goods purchased by the assessee. Such findings are pure findings of facts which do not give rise to any referable question of law".

6. Mr. Sawhney contends that the view taken by the Tribunal is wrong. Is it so?

7. The assessee in all the cases were working as wholesale dealers of cloth at Shori Market, Rohtak. The Investigation Wing of the income tax Department had made certain enquiries. It was reported that various dealers had received consignments of bales of cloth from different places. It was on the basis of this report that the Assessing Officer had made addition on account of unexplained investment. After consideration of the matter and the entire evidence on the record, the Commissioner had found that the addition to the extent of two per cent of the allegedly unrecorded sales was warranted. This view has been affirmed by the Tribunal.

8. It may be possible to take two views. However, on examination of the evidence, the Commissioner of income tax (Appeals) and the Tribunal have taken one of two possible views. The findings are based on appreciation of evidence. In the process, no question of law which may require the expression of opinion by this Court really arise. This is all the more so in view of the fact that the Revenue

has accepted the order of the Commissioner in 33 out of the 36 cases by not filing any appeal.

9. No other point has been raised.

10. In view of the above, we find that no question of law arises which may require an expression of opinion by this Court. Resultantly, the three petitions are dismissed. No costs.