

(2014) 12 DEL CK 0313

In the Delhi High Court

Case No : ITA 4/2003

Commissioner of Income Tax

APPELLANT

Vs

S. Pritam Singh

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Income Tax Act, 1961 — Section 132, 158BC

Citation : (2014) 12 DEL CK 0313

Hon'ble Judges : V. Kameswar Rao, J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Kamal Sawhney, Sr. Standing Counsel and Sanjay Kumar, Advocate for the Appellant; Prakash Kumar, Advocate for the Respondent

Judgement

Sanjiv Khanna, J.—This appeal by the Revenue pertains to block period, assessment year 1986-87 to 13.10.1995, and impugns the findings recorded in the order dated 26.06.2002 passed by the Income Tax Appellate Tribunal in relation to deletion of addition of Rs.9,10,000/- on account of profit from undisclosed sales i.e. sales made outside the books of accounts.

2. By order dated 19.12.2003, the following substantial question of law was framed:-

"(a) Whether on the facts and in the circumstances of the case the Tribunal was correct in law in deleting the addition of Rs.9,10,000/- made on account of profits earned on unaccounted sales, notwithstanding the fact that additions on account of unexplained cash and unexplained investments in stocks had been restored to the file of the Assessing Officer for further investigations?"

3. The respondent assessee an individual was subjected to seizure operations on 13.10.1995 at his residential and business premises under Section 132 of the Income Tax Act, 1961. Seizure of incriminating material including cash of Rs.12,42,950/- was made. Subsequently notice under Section 158BC dated 15.03.1996 was issued requiring the assessee to file return of income for the

aforementioned block period. The respondent assessee filed return on 27.08.1996 declaring undisclosed income of Rs.14 lacs, the break up of which is as under:-

4. The Assessing Officer however computed the undisclosed income for the block period at Rs.37,81,674/- and had made addition of Rs.9,10,000/- as profits on sales outside the books of accounts. Two other additions which had bearing on the issue in question, were Rs.10,10,000/- on account of excess cash and Rs.8,84,127/- on account of unexplained investment in excess stocks.

5. The Tribunal by the impugned order while examining addition of unexplained cash, observed that the assessee had himself surrendered Rs.5,13,650/- and in respect of Rs.4,63,300/- the assessee's explanation should be accepted. Marriage of assessee's son had taken place just 5 days before the date of search and Rs.1,63,300/- was found in the envelopes, which were the gifts received on the occasion of marriage. In respect of other amounts the assessee had established and shown withdrawal of money from the bank accounts. In respect of Rs.50,000/- an order of remand has been passed. We have been informed by the counsel for the respondent assessee at the Bar that addition of Rs.50,000/- has been sustained in the appeal effect order and the assessee has accepted the said addition.

6. With regard to unexplained stock, the assessee had surrendered Rs.6,07,900/- in the return for the block period. The Assessing Officer had made further addition of Rs.2,76,227/-. The Tribunal restored the issue to the Assessing Officer. It is stated at the Bar by the counsel for respondent assessee that in the consequential or in the appeal effect order, the Assessing Officer had sustained addition of Rs.1,58,910/- on account of undisclosed stock and the said addition has been accepted by the assessee.

7. With regard to profit from undisclosed sales, the Assessing Officer has recorded that a diary and certain loose papers were found. The Assessing Officer computed the figures mentioned in the diary and loose papers as Rs.1,37,62,147/-. The Assessing Officer held this turnover of Rs.1,37,62,147/- was not recorded in the books of accounts. He applied gross profit rate of 6.5% to compute undisclosed profits of Rs.9,10,000/-. The stand of the assessee before the Assessing Officer and the Tribunal was that the diary and the loose papers were maintained for personal purposes. It included entries duly recorded in the books of accounts. However, the papers/diary were not maintained systematically and therefore the entries in the diary/loose papers could not be matched with the entries in the books of accounts. Further, the assessee had made surrender of cash as well as unaccounted stock. The assessee had also surrendered Rs. 2,78,450/- as unaccounted income in the block assessment return.

8. The Tribunal has dealt with the said issue in the following manner:-

"At the time of search, loose papers and the small pocket diary was seized from

my residence and from my business place. These documents are mostly the rough records kept by us for internal control purposes. My diary contains collective sale figure of our three business units. But it has not been maintained systematically to prove from the books of accounts maintained. The loose papers which are mentioned by your honour are related to our purchases as I am controlling most of the purchases and items are distributed according to the requirement as on different units. I keep the records of main suppliers. These slips are estimated amounts and unsystematically maintained, therefore, I cannot match the slips with the books of accounts maintained for all the units. However, I wish to point out that the totals which are arrived at, by your honour in respect of my diary are grossly wrong as the point given in the figures has been totally ignored. Over and above all, we have surrendered all the assets cash and unaccounted expenses in our block returns. Whatsoever unaccounted cash, unaccounted stock and unaccounted expenses incurred, are surrendered is the result of business transactions not recorded in the books of accounts, on the points of law, facts and justice it is wrong to tax the same income twice, once on assets and secondly on the basis of transactions resulting with the creation of the assets.

Hence it is prayed that as your Honour is taxing the unaccounted cash, stocks and expenditure the transactions from which these assets are accumulated be ignored.

Apart from that, it was also contended that keeping in mind the fact that the assessee in his block assessment return has returned an amount of Rs.5,13,650/- apart from that Rs.6,07,900/- has been returned on account of excessive stock as such, an addition in the manner made out by the AO was not warranted in the facts and circumstances of the case.

Learned DR, on the other hand, placed, reliance on the impugned order.

Having heard the rival submissions and perused the material placed on our files and also considering the specific submissions made by the assessee before the A.O and also considering the fact that a surrender to the A.O and also facts that a surrender to the tune of Rs.5 lacs odd has been made on account of cash found at the time of the search and a surrender of Rs.6 lacs odd has been made on account of excessive stock in the return filed by the assessee for the block period as such, we are of the opinion that the addition estimating the income of the assessee on account of sales made outside the books of account is not warranted in the peculiar facts and circumstances. Accordingly, the addition made is deleted."

9. We have considered the reasoning given by the Tribunal specifically the last paragraph quoted above and have reservation on the reasons and the conclusion recorded by the Tribunal. The said reasoning holds that the assessee had surrendered about Rs.5 lacs on account of cash found at the time of search and also Rs.6 lacs on account of excessive stock and therefore no addition should be

made on account of profits outside the books of accounts. Thus the factum that the assessee had earned undeclared profits outside the books was accepted. In other words, the entries recorded in the diary etc. were treated as incriminating and reliable material. In case the assessee was transacting business outside the books of accounts, necessarily he would have earned profit from the said transactions. Some profit would have been used for personal expenses and entertainment etc. The entire undisclosed profits would not have been redeployed in trade or for purchase of undeclared stocks. The said factor and factum has not been taken into account. Moreover the assessee was unable to explain and match the entries given in the diary and the loose papers with the entries found in the books of accounts. The transactions were for a substantial amount.

10. In these circumstances we are inclined to remand the matter to the Tribunal for fresh determination. However, counsel for the assessee on instructions has stated that the assessee would like to surrender an amount of Rs.2 lacs on account of undisclosed profits, in addition to surrender of Rs.2,78,450/- which was made in the return of income. As noted above, the assessee had also accepted addition of Rs.50,000/- and Rs.1,58,910/- on account of unexplained cash and unexplained excessive stock. The assessee had earlier accepted undisclosed income of Rs.2,78,450/- in the block assessment return. In these circumstances, noticing the fact that the case relates to the block period, assessment year 1986-87 to 13.10.1995, we accept the said concession made by the counsel for the respondent assessee rather than pass an order of remand. Thus, the total undisclosed income surrendered by the assessee would be Rs. 4,78,450/-. Accordingly, the substantial question of law is answered in favour of the Revenue and against the respondent assessee and it is directed addition of Rs.2 lacs will be made to the undisclosed income over and above the undisclosed income of Rs.14 lacs declared by the assessee and other addition of Rs.2,08,910/- made by the Assessing Officer upon remand. The appeal is accordingly disposed of. No costs.