(2013) 01 GUJ CK 0057

In the Gujarat High Court

Case No : Tax Appeal No. 607 of 2012

Commissioner of Income Tax APPELLANT

Vs

Sathyanarayan P. Rathi RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 351 ITR 150

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : K.M. Parikh, for the Appellant;

Judgement

Akil Kureshi, J.—The Revenue is in appeal against the judgment and order of the Tribunal dated February 10, 2012. The following question has been raised for our consideration:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in restricting the disallowance to the extent of 12.5 per cent, of the addition on account of bogus purchase, without appreciating the factual aspect and by ignoring the manifest evidence relied upon by the Assessing Officer and overlooking the ratio laid down by the hon''ble High Court in the case of Pawanraj B. Bokadia in Tax Appeal No. 3245 of 2009 dated September 29, 2011

The issue pertains to bogus trade made by the respondent-assessee. The assessee is in the business of trading in iron and steel. For the assessment year 2003-04, during the reassessment proceedings, it was found that the purchases worth Rs. 61.40 lakhs (rounded off) were not supported by sufficient evidence. The assessee''s claim of having purchased such goods from various suppliers was verified, but was not found genuine. It was found that such parties had never supplied the goods as named by the assessee. On such basis, the Assessing Officer made addition of the entire amount of purchase of Rs. 61.40 lakhs (rounded off). The assessee carried the matter in appeal and the Commissioner of income tax (Appeals) partly allowed the appeal. It was found that though the purchases were not made from the parties from whom the assessee claimed, there was complete quantitative tally of material purchased and sold. In that view of the matter, the Commissioner of income tax (Appeals) was of the view that such materials were purchased from the open market incurring cash payment and bills were procured from various sources. Resultantly, the Commissioner (Appeals) added only profit element and not the entire amount of the said purchase, for the limited addition to 30 per cent, of the total amount and reduced the same to Rs. 18.42 lakhs (rounded off).

2. The assessee carried the issue in further appeal before the Tribunal. The Revenue also preferred an appeal against the order of the Commissioner (Appeals). Both these appeals came to be decided by the Tribunal by the impugned judgment. The Tribunal gave further relief to the assessee and refused the addition to the level of 121/2 per cent, in pursuance of the various purchases. The Revenue''s appeal was dismissed.

3. We are of the opinion that the Revenue ought to have preferred two appeals if the Revenue was aggrieved by the Tribunal''s verdict of not only rejecting its appeal but of allowing the assessee. However, when we are not inclined to interfere with the Tribunal''s order on the merits, we do not insist on the Revenue''s filing a separate appeal.

4. From the record, we noticed that the Commissioner (Appeals) as well as the Tribunal found that the purchase of raw material, in which the assessee was trading, were only made, but not from the disclosed sources. In other words, the case against the assessee was that the purchases were made in the grey market through cash payment and some entries were obtained from certain suppliers who had not sold such goods.

5. The present case, thus, being one of only purchase but not from disclosed sources, it would be only the profit element embodied in such purchase which could be added in the income of the assessee and, thus, rightly so done by the Commissioner (Appeals) and the Tribunal. If this be our conclusion, the only question arises whether such profit element should be estimated at the rate of 30 per cent, or 121/2 per cent. Whenever such a question arises, some reasonable estimation is always permissible. Hardly any question of law on such aspect would arise. Merely, it is pointed out that the assessee was a trader and that the Tribunal retained 121/2 per cent, of the purchase towards its possible profit, we do not find any reason to entertain the appeal. In the result, tax appeal is dismissed.