
(2006) 08 GAU CK 0095
In the Gauhati High Court
Case No : Income-tax Appeal No. 79 of 2003

Commissioner of Income Tax

APPELLANT

Vs

S.B. Industries

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Citation : (2006) 286 ITR 336

Hon'ble Judges : T. Nandakumar Singh, J;D. Biswas, J

Bench : Division Bench

Advocate : U. Bhuyan, for the Appellant; G.N. Sahewalla, A.K. Goswami, M.D. Aslam, D. Senapati and A. Jallan, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh J.

1. This appeal is directed against the order of the Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, dated December 17, 2002 passed in I. T. A. No. 28 (Gau) of 1996 for the assessment year 1991-92.

2. This appeal is admitted on the question :

Whether, on the findings arrived at by the Tribunal in regard to the transaction reflected in the seized register marked as SD-71, the Tribunal has committed an error in not assessing the profit of the assessee on the said transaction ?

3. Neglecting all the details the precise fact leading to the filing of the present appeal is that a search and seizure operation was conducted on December 17, 1991. During the course of search various books of account and documents marked as NBD-1 to NBD-28, JMB 1 to JMB 36 and JMB-1 to JMB 12 were seized. Some documents/papers, etc. were also seized at the residence of Shri Raj Kumar Deorah, Zoo Road, Gauhati. The documents marked SD-20, SD-71 and SD-245 relate to the present respondents (assessee/M/s. S.B. Industries, Amerigog, 9th Mile, Meghalaya for the assessment year 1991-92).

4. For the entries marked K and P appearing in the register seized marked SD-71, the respondent (assessee), in spite of giving appropriate opportunities could not clarify the entries. All those entries K and P are mainly recorded in rough books, loose sheets, exercise books and in other preliminary forms. The total amount of alleged purchases recorded in the entries K is Rs. 2,82,72,555 (rupees two crores eighty-two lakhs seventy-two thousand five hundred and fifty-five). The Assistant Commissioner of Income Tax, Circle-II(I), Gauhati, under his assessment order had treated the said whole amount of Rs. 2,82,72,555 (rupees two crores eighty-two lakhs seventy-two thousand five hundred and fifty-five) recorded in the entries marked K as the income of the assessee and the total amount of K sale of Rs. 2,73,75,147 (rupees two crores seventy-three lakhs seventy five thousand one hundred and forty-seven) had been treated as total amount of sales. Further, the Assistant Commissioner of Income Tax, Circle II(1), Gauhati, under his assessment order had taken that the estimated net profit suppressed out of the above unrecorded sale as Rs. 1 lakh 10 thousand and that the total amount of tax payable by the respondent is Rs. 98,48,741 (rupees ninety-eight lakhs forty-eight thousand seven hundred and forty one) for the assessment year 1991-92.

5. The respondent/assessee preferred first appeal before the first appellate authority, i.e., the Commissioner of Income Tax (Appeals), Gauhati. The said appeal had been registered as Appeal No. Guwa-270/94-95 and disposed of by judgment and order dated September 7, 1995, wherein it has been held that the addition of Rs. 2,82,72,555 was wholly misconceived and accordingly, the same is deleted and also the addition of Rs. 1,10,000 is also deleted.

6. The Revenue authority challenged the said order of the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal, Gauhati Bench. The Tribunal had finally disposed of the appeals by passing judgment and order dated December 17, 2002, wherein the Tribunal took the view that the entire purchase reflected in the seized register marked SD-71 cannot certainly be considered as representing the profits of the assessee. The learned Tribunal also further held that the statements of profits made by the Assessing Officer (AO) at Rs. 1,10,000 is also not sustainable in the eye of law and that the amount of Rs. 50,000 can be taken as net profit for the undisclosed transaction and, accordingly, directed the Assessing Officer to modify the assessment order.

7. Being aggrieved by the said order of the Tribunal dated December 17, 2002, the Revenue authority, i.e., the present appellant, filed the present appeal. The main grounds taken in the present appeal for challenging the order of the Tribunal dated December 17, 2002, read as follows :

(ii) For that from the materials on record the Assessing Officer was fully justified in treating the entire amount of purchases of Rs. 2,82,72,555/- as deemed to be the income of the assessee from undisclosed sources. The Assessing Officer was further justified in treating the entire entries of sale as undisclosed investment and thereafter in estimating the net profit suppressed out of the unrecorded

sales at Rs. 1,10,000 and treating the same to be the concealed income of the assessee.

(iii) For that there is a clear finding by the Tribunal at para. 6 of Tribunal's order that the assessee was not able to explain that all unrecorded transactions as found in annexure-71 are not related to the affairs of the assessee's business. The Tribunal also recorded that the assessee had kept the transaction relating to the sales and purchases of goods out of the books of account and as found reflected in annexure-71 under the head K. The initial burden was on the assessee to explain the said transaction amounting to Rs. 2,82,72,555. In the present case, there is a clear finding that the assessee was not able to explain the transaction. Therefore, the Assessing Officer was justified in adding the aforesaid amount to the income of the assessee under the head "Income from undisclosed sources". The Tribunal fell in error in holding that the Assessing Officer was only unjustified in making the said addition. The Tribunal was not justified in recording that the entire purchases reflected in the seized register cannot certainly be considered as representing the profits of the assessee. In view of the facts and circumstances, the Tribunal ought to have remanded/restored the matter back to the Assessing Officer for taking a fresh decision in accordance with law. The Tribunal failed to do so and the same has vitiated the impugned order. The finding of the Tribunal is also vitiated by the element of perversity . . .

(v) For that in so far as the addition made by the Assessing Officer of Rs. 1,10,000 under the head concealed income is concerned, the Tribunal in paragraph 7 of the order recorded a finding that the profit of Rs. 1,10,000 estimated by the Assessing Officer is purely based on estimate and without any supporting evidence. But the Tribunal also noted the facts that the assessee had also failed to furnish relevant details of the purchases and sales kept out of the regular books of account. The Tribunal took the view that the profit out of the undisclosed transaction is required to be reasonably estimated. The Tribunal held that in the absence of specific material or evidence on record, the estimate made by the Assessing Officer is not sustainable in the eye of law but went on to hold that it would be proper and justified for a profit of Rs. 50,000 is taken as the net profit from the undisclosed transaction. It is submitted that if the Assessing Officer's estimate is not sustainable in the eye of law, then applying the same principle the addition of Rs. 50,000 made by the Tribunal in place of Rs. 1,10,000 is also not sustainable in the eye of law. There is no material or evidence on record to support such quantification by the Tribunal. The Assessing Officer had estimated the net profit suppressed out of the unrecorded sales as at Rs. 1,10,000 on the basis of the assessee's income shown in the return filed. If the Tribunal was not in agreement with such an estimate, it ought to have remanded/restored the matter back to the Assessing Officer. The Tribunal's finding estimating the profit at Rs. 50,000 is vitiated by perversity.

8. Mr. G.N. Sahewalla, learned senior counsel appearing for the respondent,

strenuously submitted that the account of Rs. 2,82,72,555 shown in the entries marked F and K in the seized documents marked SD-71 cannot be taken as the total amount of transaction at one time. In support of his contention, learned Counsel further submits that the entire amount of Rs. 2,82,72,555 is the total amount of purchases made from time to time during the whole accounting year.

9. From the rival contentions of the parties and also from perusal of the records, we are of the considered view that the entire amount of the business of the assessee (respondent) i.e., Rs. 2,82,72,555 for the year 1991-92 cannot certainly be considered as income of the assessee for the assessment year 1991-92 and also that there is absolutely no basis for coming to the finding by the learned Tribunal that the sum of Rs. 50,000 shall be taken as the net profit from the undisclosed transaction, i.e., Rs. 2,82,72,555 for the assessment year, 1991-92.

10. For the reasons discussed above, we have answered the question formulated in the present appeal in the negative. Accordingly, the impugned judgment and order of the learned Income Tax Tribunal dated December 17, 2002, passed in I. T. A. No. 28 (Gau) of 1996 for the assessment year 1992 is set aside. Further, we are also of the considered view that it will be proper and justified to remit back the case to the Assessing Officer (AO) for fresh adjudication of what would be the net income out of the entries marked K, i.e., the entire amount of Rs. 2,82,72,555 and also the amount of tax payable by the respondent/assessee for the assessment year 1991-92 after ascertaining the amount of income and net profit for the assessment year 1991-92.

11. The appeal is allowed with the above observation and direction. Parties are to bear their own costs.