

(1984) 02 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 104 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Shri Baij Nath

RESPONDENT

Date of Decision : 01-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1984) 148 ITR 135

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; G.C. Sharma Vimal Gandhi and S.S. Mahajan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This is a petition u/s 256(2) of the I.T. Act, 1961.

2. Briefly, the facts are that the assessee carries on a business in woollen shawls. His case relates to the assessment year 1970-71. During the course of assessment proceedings, it came to the notice of the Income Tax Officer (ITO) that the assessee was enjoying overdraft facility from the Hindustan Commercial Bank Ltd., Majith Mandi, Amritsar (hereinafter referred to as "the Bank"). The maximum overdraft during the previous year was Rs. 2,56,831 as on October 20, 1969. The overdraft facility was enjoyed by him against the hypothecation of goods only and he had not furnished any other security to the bank. On inquiries made by the ITO, the bank informed him that as per statement of stock furnished by the assessee, the stock hypothecated with the bank as on September 27, 1969, amounted to Rs. 3,04,400. The position of the stock remained the same till October 20, 1969, when the maximum overdraft of Rs. 2,56,831 was obtained by the assessee. He was asked by the ITO to explain the position of availability of stock as on October 20, 1969. In reply, the assessee made a statement that he did not maintain copies of the statement of goods hypothecated with the bank. He, however, worked out his stock position in his own way which came to Rs. 2,97,295. In that, an amount of Rs. 43,457 was

shown as the value of goods rejected by the customers and received by the assessee. However, he did not furnish the names of the parties from whom goods had been received back. The ITO observed that there was no authentic basis for the assessee's contention regarding stock position and, consequently, estimated the total value of stock at Rs. 1,40,000 as on October 20, 1969, and, therefore, made an addition of Rs. 1,64,400 as the value of unexplained stock hypothecated with the bank.

3. The assessee went up in appeal before the Appellate Assistant Commissioner (AAC) who held that the valuation shown to the bank was not exact and that the ITO was justified in holding the value of stock of hypothecated goods at Rs. 3,04,400 as on October 20, 1969. He, however, after recording fresh evidence at the instance of the assessee, calculated the value of the assessee's unexplained stock roughly at Rs. 64,400 and, consequently, sustained the addition of the said amount only on this account as against the addition of Rs. 1,64,400 made by the ITO.

4. The Department and the assessee both filed appeals before the Tribunal against the order of the AAC. The Department filed an appeal against the amount of Rs. 1,00,000, that is, the relief granted by the AAC to the assessee, and the assessee against the addition of Rs. 64,400 maintained by the AAC. The Tribunal allowed further reduction of Rs. 2,600 to the assessee with the remarks that the value of the unexplained stock on the basis of the AAC's order worked out to Rs. 97,400 and not Rs. 1,00,000 as roughly worked out by the AAC. In other respects, it upheld the AAC's order.

5. The Commissioner filed an application before the Tribunal that the case be referred u/s 256(1) of the I.T. Act for the opinion of this court, which was dismissed, vide order dated April 3, 1976. Thereafter, he filed the present petition for directing the Tribunal to refer the following question of law to this court for its opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the AAC's order, (i) in entertaining fresh evidence without giving opportunity to the ITO, and (ii) holding that the goods of Rs. 43,487 alleged to have been returned to the assessee by his customers were available with him for the purpose of hypothecation with the bank ? "

6. Mr. Ashok Bhan has strenuously urged that the AAC entertained fresh, evidence of the assessee without giving an opportunity to the ITO to cross-examine the witnesses and to lead evidence in rebuttal. He referred to Rule 46A of the I.T. Rules, 1962 (hereinafter referred to as "the Rules"). On the other hand, the learned counsel for the assessee has argued that the point was not raised before the Tribunal. The point was not taken up even in the grounds of appeal and, therefore, the Department cannot claim a reference on this ground.

7. We have given due consideration to the argument of the learned counsel and agree with the contention of the learned counsel for the assessee. We have

carefully gone through the grounds of appeal and the order of the Tribunal. This point was not raised either in the grounds of appeal or at the time of arguments before the Tribunal. The point raised by the Department before the Tribunal was that the AAC should not have allowed the benefit of the goods of the amount of Rs. 43,457 in the absence of any evidence. The Tribunal held that the evidence was furnished in that regard before the AAC. Therefore, question No. (i) does not arise from the order of the Tribunal.

8. The next contention of Mr. Ashok Bhan is that the assessee failed to show that the goods returned by the customers to him could be hypothecated by him with the bank. According to him, it was for the assessee to show that he had the right to hypothecate the goods. On the other hand, the learned counsel for the assessee has urged that the Tribunal, after noticing the evidence, came to the conclusion that the customers returned the goods of the value of Rs. 43,457 to the assessee and which he hypothecated with the bank. That implies that he had the power to hypothecate the same. That finding, being a finding of fact, is binding on the Department.

9. We have considered the arguments of the learned counsel. However, we find substance in the contention of the counsel for the assessee. In our view, the aforesaid finding is a finding of fact and the question regarding that finding cannot be referred u/s 256 of the said Act. It is well settled that findings on questions of fact arrived at by the Tribunal are not disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they as reasonable men could come to the conclusion to which they have come. In other words, such a finding could be reviewed only on the ground that there is no evidence to support it or that it is perverse: [See Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull,]. In the present case, the finding of the AAC and the Tribunal is that some of the customers had rejected the goods and returned the same to the assessee. Thereafter, these were hypothecated by the assessee with the bank. The Tribunal affirmed the finding of the AAC by which he included the value of the goods in the assessee's stock and thus inferred that he had the right to hypothecate the goods. In such a situation, it cannot be held that the conclusion drawn by the Tribunal was perverse. Therefore, question No. (ii), being one of fact, also does not arise from the order of the Tribunal.

10. In the result, we dismiss the petition. No order as to costs.