(2010) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : IT Ref. Application No. 56 of 1994 (Assessment Year 1985-86)

Commissioner of Income Tax APPELLANT

Vs

Shrikumar RESPONDENT

Date of Decision : 04-02-2010

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

Citation : (2010) 02 RAJ CK 0001

Hon'ble Judges : Mahesh Bhagwati, J;K.S. Rathore, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By way of this reference application filed u/s 256(2) of the Income Tax Act, 1961, the revenue has canvassed that he submitted a reference application u/s 256(1) of the Income Tax Act before Tribunal, Jaipur Bench, Jaipur requesting the Tribunal to refer the following questions of law for the opinion of the High Court:

1. Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right:

(i) in accepting possession of 46.300 kgs. of silver ornaments as on approval from M/s Lodhilal Radha Govind not considering the fact that the said party was not maintaining stock register and it was almost its entire stock which had been given to Assessee for sale which is not the normal practice of business?

(ii) in rejecting the working adopted for valuation of silver by the LAC to ascertain availability of stock by M/s Lodhilal Radha Govind and applying a lower rate without any evidence and basis?

(iii) in not taking into account the fact that the alleged letter regarding delivery of gold by M/s Lodhilal Radha Govind was found at the time of search but a similar letter regarding delivery of silver was not found and this clearly indicated the manipulation?

(iv) in ignoring the fact that in normal practice when one trader sends goods to other on approval basis no entries are passed in the regular books but as per procedure of accounting approval memo is issued and entries are made in stock register?

(v) in drawing an inference otherwise than that the deviation from normal practice and procedure of business by M/s Lodhilal Radha Govind by making entries in books of account regarding goods sent on approval basis was meant to accommodate the Assessee to enable him to explain the source of silver ornaments?

(vi) in not taking note of overall conduct of the Assessee particularly with regard to non-disclosure of existence of concealed almirah by Shri Nem Prakash who was virtually conducting the business of the Assessee and very well conversant with its affairs and he denied any knowledge about the almirah but subsequently handed over the key?

(vii) in ignoring the discrepancy that how the gross weight of gold ornaments received from Shri Navrattanmal Soni could be 910.300 gms. While ornaments having gross weight of 464.900 gms. only were left with him after receiving 284 gms. by Assessee from his prior to 10-3-1984 and sent to Shri Shiv Kumar of Delhi and also in not taking into consideration the discrepancy that voucher No. 25 was dated 10-3-1984 and voucher No. 26 were allegedly issued on 6-3-1984 and also, in not taking into consideration the over-writings in the month column of the vouchers and also in not considering the purchase voucher No. 9 which shows that signatures are fabricated as they differ?

(viii) in not considering the infirmities and discrepancies noted in the statements of Shri Heeralal, Prop. Lodhilal Radha Govind recorded at the time of survey on 11-5-1984?

2. Despite the aforesaid questions being the pure questions of law which needed adjudication thereof, the learned Tribunal rejected the reference application on 13-10-1993. The revenue has prayed that the reference application be allowed and the Tribunal may be directed to refer the aforesaid questions of law along with statement of the case for the decision by this Court.

3. Heard learned Counsel for the parties and carefully perused the relevant material on record.

4. Learned Counsel for the revenue canvassed that the proposed questions were purely the questions of law and the learned Tribunal sans considering and appreciating the relevant material as also the evidence, rendered a perverse order rejecting the reference application. The learned Tribunal did not take into account this fact that the letter regarding delivery of gold by M/s Lodhilal Radha

Govind was found at the time of search, but a similar letter regarding delivery of silver was not found, which tangibly indicated a manipulation by the Assessee. Hence, all the aforesaid questions need to be adjudicated by the Court. Hence, the learned Tribunal may be directed to make a reference of substantial questions of law to this Court.

5. E Contra, the learned Counsel for the Assessee has vehemently assailed the submissions made by the learned Counsel for the revenue and canvassed that albeit the gold and silver, which were received by the Assessee from M/s Lodhilal Radha Govind on approval were not recorded in his books of accounts but this silver was very well found to have been recorded in the books of accounts of M/s Lodhilal Radha Govind. This firm is a regular Assessee and his books of accounts inspires confidence. Learned Counsel for the Assessee took us to the order dated 9-1-1990 rendered by the Tribunal and contended that the learned Tribunal having found the decision of the Tribunal depending on facts did not find any referable question of law, a reference of which could be made to the High Court and thus, rejected their prayer. The tax reference made by the revenue is devoid of substance and the same deserves to be dismissed.

6. Having reflected over the submissions made at the Bar and carefully perused the relevant material on record, we notice that the order dated 9th Jan., 1990, rendered by the Tribunal is exclusively based on facts. We also notice that the learned Tribunal elaborately discussed the facts and having minutely appreciated them concluded that there was no referable question of law, which could be referred to the High Court for its adjudication.

7. Sub-section (2) of Section 256 of Income Tax Act (now stands omitted) envisaged that if on an application made under Sub-section (1), the Tribunal refused to state the case on the ground that no question of law arose, the Assessee or the CIT as the case may be, could apply to the High Court and the High Court could, if it was not satisfied with the correctness of the decision of the appellate Court, require the Tribunal to state the case and to refer it accordingly, but in the instant case, no substantial question of law is found to have arisen, which may need adjudication by this Court.

8. It is relevant to record that the present reference application u/s 256(2) of the Income Tax Act, 1961 relates to the assessment year 1985-86. The learned Tribunal rightly observed that the decision dated 9-1-1990 of the Tribunal was tangibly based on facts and no referable question of law arose and thus, the learned Tribunal rightly dismissed the reference application.

9. Learned Counsel for the revenue albeit endeavoured to impress upon, but could not convince us to take a contrary view to that of the view taken by the learned Tribunal. We are in full agreement with the finding arrived at by the learned Tribunal that no substantial question of law is found to have arisen in the instant case.

10. For the reasons stated above, the income tax reference application filed u/s

256(2) of the Income Tax Act, 1961 being totally bereft of any merit deserves to be dismissed and the same stands dismissed accordingly.

