
(1997) 03 MAD CK 0145

In the Madras High Court

Case No : Tax Case Petns. No's. 196 and 197 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Sri Padmavathi Cotton Mills.

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 28

Citation : (1998) 148 CTR 371 : (1999) 236 ITR 340

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—These are petitions filed by the Revenue under s. 256(2) of the IT Act, 1961, (hereinafter referred to as "the Act"), to direct the Tribunal to state a case and refer the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the subsidy received should not be reduced from the cost of assets for the purpose of allowing depreciation and investment allowance ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in deleting the addition of Rs. 1,47,557 made by the ITO to the income declared ?"

2. The assessment year involved is 1982-83.

3. In so far as the first question is concerned, Mr. C. V. Rajan, learned counsel for the Revenue stated that the issue raised in the said question is fully covered by the decision in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., against the Revenue. The Supreme Court in that case has held that the central subsidy received should not be reduced from the cost of assets for the purpose of allowing depreciation and investment allowance. Following the said decision of the Supreme Court, we are of the view that the first question sought

for is not a referable question of law.

4. The facts leading to the second question are as under :

The assessee in his return filed for the asst. yr. 1982-83, had shown the closing stock as on 30th June, 1981 at 30,851 kgs. of cotton and finished goods, whereas it had declared the closing stock at 31,660 kgs. to the bank for the purpose of obtaining a loan from it. The AO noticed that there was discrepancy in the stock shown in the books of account and in the declaration made for obtaining the loan from the bank and the declaration made to the bank would represent the value of the closing stock and he added the value of the discrepancy amount to Rs. 1,47,557 towards the gross profit declared by the assessee. The assessee preferred an appeal before the Dy. CIT(A) against the addition made towards the gross profits. The Dy. CIT(A) held that the figures of stock as shown to the bank should be deemed to be correct, and the ITO was justified in making an addition of the sum of Rs. 1,47,557 towards the gross profit. In this view of the matter, he confirmed the addition made by the ITO. The assessee preferred an appeal before the Tribunal. The assessee, before the Tribunal, contended that its books of account have not been rejected and the stock position reflected in its accounts tallied with the statutorily maintained R.G. Register maintained for Excise purposes and the stock declared in the return should be taken as the correct closing stock and not the stock declared to the bank for the purpose of obtaining loan. On the other hand, it was urged on behalf of the Revenue that the order of the Dy. CIT(A) did not call for any interference. The Tribunal found that the assessee has been maintaining accounts and the accounts have not been rejected by the Department as not representing the correct stock position. The Tribunal following the decision of this Court in the case of Commissioner of Income Tax, Madras Vs. Ramkrishnan Mills (Coimbatore) Ltd., held that the closing stock declared in the return, which is based on the books of accounts of the assessee should be taken into consideration for the purpose of ascertaining the correct closing stock and the consequent gross profit.

Accordingly, it directed the deletion of Rs. 1,47,557 added by the AO towards the gross profit declared by the assessee.

5. The Revenue filed an application before the Tribunal with a request to state a case to this Court and refer the question of law as set out in question No. 2 extracted above. The Tribunal held that its decision was based on facts of the case and no referable question of law arises. Aggrieved, the Revenue has preferred these Tax Case Petitions. Mr. C. V. Rajan, learned counsel for the Revenue submitted that this Court in Coimbatore Spinning and Weaving Co. Ltd. Vs. Commissioner of Income Tax, has held that where an assessee had in order to obtain higher loan facilities, inflated its stock figures in the statement given to the bank, that statement should be accepted and on the basis of the decision of this Court in the above said case, the view of the Tribunal that the stock declared to the bank should be ignored for the purpose of estimating the correct closing

stock and the consequent gross profit, is not correct in law.

6. Mr. Janakiraman, learned counsel appearing for the assessee, submitted that the finding arrived at by the Tribunal is based on the facts of the case and as the finding is one of fact, no question of law arises out of the order of the Tribunal.

7. We have carefully considered the rival contentions. The Tribunal noticed that the books of account have not been rejected by the Department as not representing the correct stock position, the Tribunal also found that the assessee had declared a higher quantity of the closing stock to the bank for the purpose of securing the loan. The Tribunal has not rejected the contention urged on behalf of the assessee that the stock position reflected in the accounts tallied with the R.G. Register. In view of the above factual settings, the Tribunal came to the conclusion that the closing stock declared in the return filed by the assessee was based on the books of account and it should be accepted rather than the closing stock as declared to the bank which was made for the purpose of securing a loan.

8. Though, in the enclosure filed before the Tribunal in the reference application, the Revenue has stated that the stock declaration to the bank was as per actual quantities and the further declaration was verified by the assessee itself, it is not clear on what basis the statement was made in the enclosure to the reference application. We do not have any material to show that the stock balance declared by the assessee to the bank was as per the actual quantities. There is no finding by the Tribunal that the stock declared to the bank was based on the actual quantity. It is further seen that there is no evidence to show that the bank actually verified the stock and found it to tally with the stock declared to it by the assessee. Hence, we have to go only by the finding of the Tribunal to the effect that the stock declared by the assessee in its return is based on the books of accounts of the assessee and that the accounts of the assessee have not been rejected by the Department.

In view of all these facts, the Tribunal has come to the correct conclusion in holding that the stock declared in the return filed by the assessee based on the books of account is correct. We are of the opinion that a finding on the question as to what is the correct quantum of closing stock is a pure question of fact and since the finding of the Tribunal was arrived at on the basis of the materials on record, we are of the opinion that no referable question of law arises out of the order of the Tribunal for our consideration. Hence, we hold that the second question sought for is not a referable question of law.

9. In the result, we hold that both questions 1 and 2 are not referable questions of law, and we reject the Tax Case Petitions. No order as to costs.