
(1993) 11 AHC CK 0049

In the Allahabad High Court

Case No : Income-tax Application No. 12 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Surjit Singh Mahesh Kumar

RESPONDENT

Date of Decision : 08-11-1993

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144, 145(2), 256(1), 256(2)

Citation : (1994) 210 ITR 83

Hon'ble Judges : S.C. Verma, J; R.K. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—Through this application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Commissioner of Income Tax requests the Appellate Tribunal to refer the following two questions as questions of law for the opinion of this court :

"1. Whether the Income Tax Appellate Tribunal was correct in law in reducing the multiplier of licence fee and also net rate of profit in the assessee's case ignoring the market realities and in face of the fact as admitted by the Income Tax Appellate Tribunal in its order that the sales were undisputedly unverifiable and also there was no restriction of the State Government or any other authority in charging any sale price ?

2. Whether in view of the ratio of the decision of the Supreme Court in the case of The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, the Tribunal was correct in law in resorting to adhocism and deviating from its own accepted formula for years for estimating the profit of the assessee who is a liquor contractor especially when the applicability of the provisions of Section 145(2) is not disputed ?"

2. Having heard learned counsel for the parties, in our opinion, the application is liable to be rejected. The brief facts as they emerge from the order of the

Income Tax Appellate Tribunal and those passed by the other tax authorities are that in the assessment year 1985-86 to which this application relates, the respondent-assessee had returned a taxable income of Rs. 1,80,000 being profit from the sale and purchase of country liquor. The assessment was, however, completed on the best judgment on an income of Rs. 4,54,612 before deduction of firm tax upon rejection of the account books within the meaning of Section 145(2) of the Act. The computation of the assessed income was made by applying the net profit of five per cent. on the estimated sale of Rs. 90,000 which was two and a half times the licence fee. On appeal, the Commissioner of Income Tax (Appeals) sustained the rejection of the account books and the application of the provisions of Section 145(2) of the Act. However, he reduced the assessed income to Rs. 2,34,000 observing that it would be reasonable to estimate the sales around two times the licence fee applying the rate of 3.25 per cent. of the net profit to such estimated sales or applying a flat rate of 6.5 per cent. of the licence fee, that is, contract money, paid by the contractor (assessee) to the Excise Department to arrive at the taxable net profit or income. Against the appellate order, cross appeals were filed to the Income Tax Appellate Tribunal, both by the assessee as well as the Revenue, which were dismissed by a common order. The Revenue thereafter filed an application u/s 256(1) of the Act which also met with the same fate. It is in this background that the present application has been made with the prayer referred to earlier.

3. It is evident that the controversy for consideration before the Income Tax Appellate Tribunal was as to what should be the correct figure of estimated income on which the assessee should be made liable to tax for the assessment in question. Now Section 145(2) of the Act empowers the Assessing Officer to determine the income to the best of his judgment in the manner provided u/s 144 of the Act on his not being satisfied about the correctness and completeness of the accounts of the assessee or where no method of accounting is regularly employed by the assessee. In such a situation, although the assessment is made in the manner provided in Section 144 of the Act, nevertheless the assessment is u/s 143(3) of the Act. It is well-known that in the case of best judgment where resort is taken to Section 144 of the Act, the Assessing Officer exercising his judgment cannot act arbitrarily or capriciously. The assessment must proceed on judicial considerations in the light of the relevant material that may be brought on record. In the instant case, the Income Tax Appellate Tribunal while sustaining the order passed by the Commissioner of Income Tax (Appeals) has taken into account comparable cases which were brought to its notice where the profit rate of 1.7 per cent. to 3.7 per cent. was either applied or accepted. The Income Tax Appellate Tribunal noticed that the licence fee, purchase and capsuling charges were totally verifiable because these have been paid to the Government or prescribed agencies at the prescribed rates. The additional factor in favour of the respondent-assessee was maintenance of accounts which had been audited u/s 44AB of the Act. As the sales of the assessee were not capable of verification, in the opinion of the Income Tax Appellate Tribunal, it called for an estimate of

sales and the rate of profit to be applied thereon in order to work out the taxable income. These matters have been discussed by the Income Tax Appellate Tribunal at length. In the situation with which the Income Tax Appellate Tribunal was confronted, it cannot be disputed that there can be no rigid tailor-made formula which can be applied to every case. Everything would depend on the facts and circumstances of each case. The finding in a given case about the applicability of a particular rate of net profit on the sales disclosed or estimated is one of fact. In other words, in cases of assessment at a flat rate of profit, the rate to be applied does not raise a question of law. Likewise an estimate of turnover of sale would also normally not give rise to a question of law except in exceptional circumstances. In every case of best judgment, the element of guess work cannot be eliminated. So long as the best judgment has nexus with the material on record and the discretion in that behalf has not been exercised arbitrarily or capriciously, it is not open to scrutiny in these proceedings to give rise to a question of law or to a mixed question of law and fact. In the present case, the Income Tax Appellate Tribunal while arriving at its conclusion has taken into account the past and subsequent events in the assessee's own case as well as the prevailing trading conditions at the relevant time and the average rate of profit disclosed by similar traders in the area about which no fault was pointed out to us.

4. For what has been stated above, the order of the Income Tax Appellate Tribunal is concluded by findings of fact and does not give rise to any question of law. The application is without merit and is set aside with costs which we assess at Rs. 200.