

(1984) 05 PAT CK 0036
In the Patna High Court
Case No : Tax Case No. 53 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Varieties

RESPONDENT

Date of Decision : 23-05-1984

Acts Referred:

Income Tax Act, 1961 — Section 154, 254, 256(2), 66(2)

Citation : (1985) 48 CTR 298 : (1985) 154 ITR 293 : (1985) 20 TAXMAN 297

Hon'ble Judges : S.K. Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Kashi Nath Jain, for the Respondent

Judgement

Ashwini Kumar Sinha, J.—Pursuant to this court's order dated January 20, 1976, the Income Tax Appellate Tribunal, Patna Bench, " B ", has stated the case and submitted the statement u/s 256(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), of the case and forwarded the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of this case, the Tribunal was justified in law in giving a reduction of Rs. 24,799 in the cloth account of the assessee ? "

2. After the order was passed by this court, it seems that on March 15, 1976, on a miscellaneous application filed by the assessee before the Tribunal u/s 254 of the Act, the Tribunal accepted the assessee's contention and held that the sales on which the relief at 5% had to be calculated would be Rs. 5,63,794 instead of Rs. 4,95,885 adopted in the Tribunal's original order and thus it was held that the assessee was entitled to a relief of Rs. 28,189 instead of Rs. 24,799 as calculated earlier. The Tribunal held that apparently there had been a mistake of arithmetical calculation in respect of the reliefs allowed. Thus the figure of Rs. 24,799 was corrected by order dated March 15, 1976.

3. While submitting the statement of case, the Tribunal has suggested that the figure to be considered in the question of law should now be Rs. 28,189 and not Rs. 24,799 as originally allowed. We accept the suggestion of the Tribunal and reframe the question as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in giving a reduction of Rs. 28,189 in the cloth account of the assessee ?

4. The assessee is a partnership firm. The assessment year involved is 1968-69 with the year ending August 9, 1967, as the corresponding previous year. The assessee is a dealer in cloth and readymade garments. The assessee admittedly maintained only one combined trading account for readymade garments as well as other cloth. On a sale of Rs. 6,69,929 the assessee showed a gross profit of Rs. 82,849. The ITO found that the sales included the sale of readymade garments to the tune of Rs. 67,909. The ITO considered the gross profit to be low and found that the assessee did not maintain any qualitative or quantitative details of the stock handled by it. He, therefore, rounded off the total sale to Rs. 6,70,000 out of which he took Rs. 70,000 as the sale of readymade garments. Having rounded off the total sale and also having rounded off the sales of readymade garments, he applied a rate of 12 1/2% of the sale of cloth estimated at rupees six lakhs and applied a rate of 20% on the sale of readymade garments estimated at Rs. 70,000. Having applied the two rates of percentage, as just mentioned above, the ITO made an addition of Rs. 6,151 to the results disclosed by the assessee,

5. The assessee went up in appeal before the AAC. The AAC found that the addition made by the ITO was not adequate. He, in his return, found that the closing stock of the readymade garments was not shown separately by the assessee. Admittedly, the readymade garments business was started for the first time during the year in question and so there was no opening stock. The assessee showed the closing stock of all the goods including readymade garments at Rs. 1,93,399, but the assessee, as just stated above, had not shown the closing stock of the readymade garments separately. The assessee, when asked, expressed its inability to give the separate figure relating to the closing stock of readymade garments alone. In this background, the AAC then found that the opening stock of the readymade garments of the assessee of the subsequent assessment year, namely, 1969-70, was shown at Rs. 13,026 worth of readymade garments. The AAC adopted this figure as the closing stock of the year under consideration and then he recast the whole trading account of the readymade garments alone as mentioned below :

Rs. Rs.

"Purchases 1,01,470 Sales 67,909

Closing stock 13,026

Loss 20,535

1,01,470

1,01,470

6. This recasting of the trading account by the AAC showed a loss of Rs. 20,535, according to the assessee's own books of account, and the AAC considered this loss of Rs. 20,535 as ridiculous and he held that the rate of 20% was reasonable profit in readymade garments. On the basis of 20% normal gross profit, the AAC held that the suppression amounted to Rs. 42,646. The AAC also held that applying 20% normal gross profit would not be absurd. Thus, invoking his power of enhancement, he enhanced the addition made by the ITO from Rs. 6,151 to Rs. 42,646.

7. It is pertinent to state here that the AAC enhanced the percentage to 17.2 (which was taken by the Tribunal as 17.5% by way of rounding off).

8. Aggrieved by the above order of the AAC, the assessee went up in further appeal before the Tribunal. On behalf of the assessee, it was contended that the enhancement made in the readymade garments account was not only uncalled for, but excessive. It was further contended that a portion only of the combined trading account could not be considered without referring to the whole account produced by the assessee and it was contended that the recasting of the readymade garments account by the AAC had inevitable repercussions on the results of the other cloth account and the AAC should not have ignored that completely. In other words, it was contended that the addition to the profit and sales of the readymade garments account was bound to result in a corresponding reduction in the sale and profit of the other cloth account as, admittedly, no suppression of sales was found by the Revenue authorities on the other cloth account. It was further contended on behalf of the assessee that the addition made by the AAC was under a wrong conception of law revealing a gross profit of Rs. 1,03,384 on the total sales of Rs. 6,02,020 giving a margin of profit of 17.2%.

9. The Tribunal held that the closing stock of readymade garments for the year under consideration was correctly taken at Rs. 13,026 and the rate of 20% applied by the AAC for determining the profit in readymade garments was also fair and reasonable. The Tribunal, however, on pure arithmetic, held that the sale of readymade garments calculated at 20% profit on the cost came to Rs. 1,06,135 and on that basis it held that the addition by the AAC on this item (i. e., readymade garments) should have been Rs. 28,226 instead of Rs. 42,646. The Tribunal, therefore, gave a reduction of Rs. 14,420 on this account.

10. Here at this stage it is pertinent to mention that we are not concerned with this reduction of Rs. 14,420 on the readymade garments account.

11. With regard to the other cloth account, the Tribunal accepted the contention advanced on behalf of the assessee and held that only a portion of the account

could not be taken and interpreted bereft of the context in which it appeared ignoring the consequence of such interpretation on the other part of the accounts. Though it will be bare repetition, the assessee admittedly was maintaining only one combined trading account for both the items, i.e., for readymade garments as well as other cloth account. Having agreed with the contention advanced on behalf of the assessee with regard to the consequential adjustment in the cloth account in gross profit of 17.5% (here I must make it clear that the Tribunal is rounding off 17.2% found by the AAC to 17.5%) as very high. The Tribunal held that the rate of 12.5% (as taken by the ITO) was a reasonable one in the other cloth account and thus the Tribunal gave a reduction of 5% in this account (i.e., other cloth account) on the reduced sale of Rs. 4,95,855 (wrongly printed as Rs. 4,93,885 in the paper book). Giving a reduction of 5% on the other cloth account on the reduced sale, the Tribunal held that the assessee was entitled to a further reduction of Rs. 24,779. In other words, the Tribunal sustained some part of the addition as made by the AAC, but also gave a reduction of Rs. 24,779. At this stage, it would be pertinent to mention that the assessee, as already stated above, by a miscellaneous application, brought to the notice of the Tribunal about the mistake of calculation which the Tribunal appreciated and held that there was a mistake of calculation and the sales on which the relief at 5% had to be calculated would be only Rs. 5,63,794 (Rs. 6,69,922 less Rs. 1,06,135) instead of Rs. 4,95,885, adopted in the Tribunal's original order and, therefore, the assessee was held to be entitled to a relief of Rs. 28,189 instead of Rs. 24,779 as calculated earlier. Thus, the figure was rectified u/s 154 of the Act.

12. The learned senior standing counsel appearing for the Revenue has argued with all tenacity that the Tribunal was wrong in thinking that the AAC had made an addition in the gross profit in the other cloth account; on the contrary, the learned senior standing counsel submitted that the AAC had not touched the cloth account at all and the AAC had taken only the closing stock of garments which was the opening stock in the subsequent year as shown by the assessee himself. The learned senior standing counsel has submitted that it was erroneous on the part of the Tribunal to hold that the AAC had made any addition on the cloth account. On the other hand, the learned counsel for the assessee submitted that the AAC did enhance the margin of profit from 12.5% to 17.2% on the total sales and then came to a finding that the gross profit to be revealed to be Rs. 1,03,384 as against Rs. 82,450 as shown by the assessee (and not accepted by the ITO). Thus, the learned counsel appearing for the assessee demonstrated before us that the gross profit of Rs. 1,03,384 taken by the AAC on the total sales of the other cloth, i.e., Rs. 6,02,020, when calculated mathematically is really 17.2%.

13. In support of the submission, the learned senior standing counsel for the Revenue relied upon the case of Chainrup Sampatram Vs. Commissioner of Income Tax, West Bengal, . The facts of the case relied upon were entirely different and the ratio of that case is not applicable in the instant case. What

happened in that case is that the assessee, a registered firm consisting of two partners and carrying on business at Calcutta as bullion merchants dealing mainly in silver, kept its books on the mercantile basis. In the relevant year of account some bars of silver were sent to the Indian State of Bikaner from Calcutta where the partners resided and their value at cost was credited in the assessee's books at Calcutta. In the assessment proceeding it was contended on behalf of the assessee that the silver bars had been sold to the partners for their domestic use, but the Revenue authorities held the alleged sale was not a genuine one and the silver bars sent to the Indian State of Bikaner still formed part of the assessee's stock-in-trade at the close of the year of account. Having held as such, the Revenue authorities accordingly included in the taxable profits a sum of Rs. 2,20,887 as the excess arising from the valuation of the silver bars at the market rate at which the rest of the closing stock at Calcutta was valued in the assessee's books. The Appellate Tribunal on appeal upheld the action of the lower authorities. Then, on a reference to the High Court u/s 66(2) of the Act, the High Court answered the question in the affirmative; in other words, the High Court also affirmed the decisions of the Revenue authorities. The matter went up to the Supreme Court by way of special leave. The Supreme Court, on the facts of that case, held that on the finding of the Income Tax authorities, the silver bars lying at Bikaner had not really been sold but remained part of the unsold stock of the assessee's business at the end of the accounting year. The whole of the profits of that year must be taken to have accrued or arisen at Calcutta where the business was carried on since it was still in the stock in the hands of the assessee and no part of that business admittedly had been transacted at Bikaner. Thus, the Supreme Court held that the sum of Rs. 2,20,887 was very correctly held to be assessable to tax.

14. From the facts of the case relied upon by the learned senior standing counsel for the Revenue, it is obvious that the facts there were absolutely different, the point to be decided was absolutely different and hence, in my opinion, the learned senior standing counsel, though has relied upon this case with some tenacity, is completely under a misconception.

15. In the instant case, the ITO did not disbelieve the gross profits at Rs. 82,849 (inclusive of both the items, i.e., readymade garments and the cloth account) and fixed the margin of profit at the rate of 12 1/2% on the cloth account. The AAC held that there was suppression of sales so far as readymade garments were concerned, but accepted the closing stock and the purchase as disclosed by the assessee on the cloth account. Still, on a wrong parity of reasoning, he held that the gross profit was Rs. 1,03,384 on the total sales of Rs. 6,02,020.

16. The account of the assessee being a combined trading account for readymade garments and other cloth as well, the assessee had shown a gross profit of Rs. 82,849 (inclusive of both the items). When the AAC added some amount on one item alone, i.e., on readymade garments on the ground that the sales were suppressed, then I hold that this combined trading account could not

be considered without referring to the whole account. Recasting of the readymade garments account by the AAC had an inevitable repercussion on the result of the cloth account and it was wholly erroneous on the part of the AAC to have ignored the same completely. The Tribunal, in my opinion, has very correctly held that the portion of account had an important relation in the context in which it appeared and a portion of the account could not be taken or interpreted bereft of that context. In my opinion, the Tribunal took a very correct view of law, as it had the consequential adjustment in the other cloth account which, as found by the AAC, resulted in the gross profit of 17.5%. At this stage though it will be a bare repetition, it must be mentioned that the ITO had fixed it at 12.5% only, and it was not a subject-matter of enhancement before the AAC and even then the AAC invoking his power of enhancement increased the gross profit to 17.2% (which was rounded off by the Tribunal to 17.5%). I, however, hold that the Tribunal very correctly held that the rate of percentage thus fixed was high and that 12.5% was a reasonable one and in that view of the matter, I hold that the Tribunal very correctly gave a reduction of 5% in this account (i.e., in the cloth account) on the reduced sale at Rs. 4,95,885 which very correctly resulted in a further reduction of Rs. 28,189.

17. For the foregoing reasons, I hold that there is no substance in the submissions advanced by the learned senior standing counsel for the Revenue and I hold that the Tribunal was justified in law in giving a reduction of Rs. 28,189 in the cloth account of the assessee. The answer to the question, thus, in my opinion, is in the affirmative, in favour of the assessee and against the Revenue. Hearing fee Rs. 250.

S.K. Jha, J.

18. I agree. In deference to the tenacity of the learned senior standing counsel for the Revenue, I wish to highlight the main point involved in this case. The decision of the Supreme Court in *Chainrup Sampatram Vs. Commissioner of Income Tax, West Bengal*, referred to by my learned brother, was laying down a principle of law, namely, as to whether the silver bars in which the assessee of Calcutta in that case was dealing lying in Bikaner and not transacted upon in any manner still formed a part of the stock-in-trade and was liable to tax. On the contrary, in the case in hand, it is a mere quantification of the correct figure to be arrived at in the process of arithmetical calculation or computation. It involves no question of law at all. Since, however, the question as framed by this court calling for a reference u/s 256(2) of the Act has a larger ambit, it has necessitated us to go into the facts for the purpose of finding out as to whether, on the facts and in the circumstances of this case, the Tribunal was right in its computation of the amount of deduction to be allowed to the assessee. There lies the whole difference between the decision of the Supreme Court and the instant case.