
(1986) 01 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 146 of 1982

Dinanath Dubey

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1986) 57 CTR 233 : (1986) 160 ITR 1

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; B.K. Rawat, for the Respondent

Judgement

J.S. Verma, Actg. C.J.

1. In accordance with the direction given by this court u/s 256(2) of the Income Tax Act, 1961, the Tribunal has stated the case and referred for the decision of this court the following question of law, viz. :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Appellate Assistant Commissioner regarding the item of Rs. 35,224 ?"

2. The relevant assessment year is 1972-73. The assessee is a firm carrying on business of executing contracts for transporting and loading of goods at the Bhilai Steel Plant. The assessee utilised hired transport for the work of transporting goods in addition to utilising its own fleet of four trucks.

3. According to the books of account of the assessee, there was a loss of Rs. 35,224 in plying all the four trucks and there was a net income of Rs. 1,32,209 from execution of the contracts. This was the income declared by the assessee in the return. The Income Tax Officer rejected the books of account and estimated the income from plying of the assessee's own trucks at Rs. 5,117 as against the loss of Rs. 35,224 alleged by the assessee resulting in effect in an addition of

about Rs. 40,000 under this head. Together with the other additions made by the Income Tax Officer, the income of the assessee determined by the Income Tax Officer was Rs. 2,18,000 out of the total receipts of Rs. 29,27,950. In the assessee's appeal to the Appellate Assistant Commissioner, deletion of Rs. 25,000 under the head of demurrage was made in addition to accepting the assessee's claim of loss of Rs. 35,224 as loss resulting from plying of the assessee's own trucks. The Department then preferred an appeal to the Tribunal. The Tribunal rejected the assessee's claim of loss of Rs. 35,224 from plying of its own trucks and accordingly reversal of the Income Tax Officer's finding on this point by the Appellate Assistant Commissioner was set aside.

4. Aggrieved by the Tribunal's decision, the assessee filed an application u/s 256(1) of the Act which was rejected. Thereafter, the assessee's application u/s 256(2) of the Act made in this court succeeded resulting in a direction leading to reference of the above question of law for the decision of this court.

5. The contention of the learned counsel for the assessee is that the Tribunal was not justified in reversing the Appellate Assistant Commissioner's finding on the question of loss resulting from plying of the assessee's trucks claimed at Rs. 35,224. It is urged that the Appellate Assistant Commissioner's finding on this question, being based on cogent reasons, could not be reversed on the only ground stated by the Tribunal. We are unable to accept this contention. The Tribunal has given detailed reasons in paras. 9 to 12 of its order (annexure C) dated December 12, 1974. It has been mentioned that the conclusion reached by the Tribunal is based on the rate applied to the assessee's case during the earlier years' assessments which were treated as comparable for this purpose. Rejection of the books of account of the assessee not being in controversy, application of the rate of profit in accordance with that applied in the earlier years' is really a question of fact in the present case. At any rate, there is nothing to indicate that the Tribunal's finding on this point is unjustified. This reference has, therefore, to be answered against the assessee.

6. Consequently, this reference is answered against the assessee and in favour of the Revenue as under :

"The Tribunal was justified in setting aside the order of the Appellate Assistant Commissioner regarding the item of Rs. 35,224."

7. There shall be no order as to costs.