(1988) 12 CAL CK 0025

In the Calcutta High Court

Case No : Income-tax Reference No. 12 of 1978

Dwarka Prasad Bajaj APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-12-1988

Acts Referred:

Income Tax Act, 1961 — Section 145

Citation : (1990) 181 ITR 277 : (1989) 45 TAXMAN 145

Hon'ble Judges : J.N. Hore, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : Das, for the Appellant;

Judgement

A.K. Sengupta, J.—This reference relates to the assessment years 1967-68 and 1970-71. The assessee is engaged in the business of production of mustard oil out of seeds. During the assessment year 1967-68, it declared the yield of oil at 36.36 per cent. of the cake at 62.90 per cent and of gad at 0. 74 per cent. The Income Tax Officer did not question these yields. He, however, made, two additions, one of Rs. 15,922 to the gad account and the other of Rs. 16,923 for understatement of gross profit in the mustard oil and oil-cake accounts. About the gad, the assessee showed the average selling price at about Rs. 25.80 per quintal. The price of cake, on the other hand, was shown at Rs. 48.50 per quintal. The Income Tax Officer did not think that the gad could be sold even below the price of cake. He, therefore, applied the rate of Rs. 48.50 per quintal to gad also and made the impugned addition. The Appellate Assistant Commissioner confirmed the addition.

2. Before the Tribunal, it was submitted that the yield in gad was higher this year, i.e., in the assessment year 1967-68 as compared to the earlier year 1966-67 when it was only 73 per cent. It was also submitted that no defect in the books of account was found and, therefore, the addition could not be justified.

3. Besides the above, the Income Tax Officer also found that if the gross profit

shown in the miscellaneous items was excluded, then the gross profit in the oil and oil-cake accounts came to Rs. 1,36,021. He considered this to be low. He estimated the gross profit in oil at 2.6 per cent. and in oil-cake at 4 per cent. and made an addition of Rs. 16,923 to the production account

4. It was submitted before the Tribunal that the lower authorities were unable to find any defects in the maintenance of books of account, that the Appellate Assistant Commissioner failed to deal with this matter and, therefore, the addition could not be sustained. It was also submitted that even though the assessee had earned a gross profit of 3.56 per cent. and 3.39 per cent. in the assessment years 1965-66 and 1966-67, it had earned lower profit of 2.60 per cent. in the year under reference because of an order of the Government restricting the profit to 25 per cent. only. It was also pointed out that in the case of the assessee''s relative a lower rate of profit of 2 per cent. had been accepted by the Income Tax Officer and the Appellate Assistant Commissioner.

5. The Tribunal was of the opinion that it was necessary to view both the additions of Rs. 15,922 and Rs. 16,923 together. The Tribunal was also of the opinion that since the yields shown by the assessee were reasonable, no addition could be sustained on that ground. However, it was further of the opinion that the gross profit shown was not reasonable as compared to the earlier two years. It further observed that none of the contentions raised by the assessee could be accepted. It stated that no evidence appeared to have been led before the Appellate Assistant Commissioner in support of the fact that the book result could not be rejected, that besides a bare statement that the books had been properly maintained nothing else was stated and the fact that there was a Government order restricting the rate of profit was also not submitted before the Appellate Assistant Commissioner or before the Income Tax Officer. The Tribunal, in the circumstances, did not allow this point to be taken before it for the first time as, according to it, it was clearly an afterthought. Similarly, the Tribunal stated that the case of the assessee''s relative also could not be looked into at this stage as the facts in that case were not available in detail nor did it know the nature of his business. The Tribunal further observed that there was no reason for a steep fall in the rate of profit in view of the rising trend of the prices in the market throughout the period. Considering the circumstances of the case, it adopted a rate of 3 per cent. as gross profit and restricted the addition to Rs. 28,000 only.

6. In the assessment year 1970-71, besides the oil mill at Raniganj, the assessee also started another oil mill at Calcutta. The Income Tax Officer found that the assessee had maintained stock books for mustard seeds, oil, oil-cake, as also a production register for oil. Still, however, he made two additions to the Raniganj oil mill account, one of Rs. 68,611 for shortage in seeds in refraction and another of Rs. 67,663 for understatement in gross profit. The Appellate Assistant Commissioner allowed the entire refraction. He, however, maintained the addition of Rs. 7,500 for low rate of gad shown by the assessee. The Income Tax

Officer also found that the expenses on purchases of old tins, labour charges and electricity charges were not properly verified. He found that the wage register was not properly maintained. In these circumstances, he applied different rates of gross profit to the mustard seeds, oil and oil-cake accounts and thereby worked out an addition of Rs. 67,653. The Appellate Assistant Commissioner supported the order of the Income Tax Officer. With regard to the wage register, he found that for various labourers on certain dates only one person had put his thumb impression against the payment. The unpaid register was produced before him after repeated reminders. He found that this register had been prepared at a stretch only a few days ago before it was produced before him. He also analysed the expenses claimed on electricity charges and found that they were not uniform with reference to the production declared. He, therefore, confirmed the addition of Rs. 67,653.

7. Since the submissions before the Tribunal in the above year were also the same which were placed in connection with the appeal for the assessment year 1967-68, the Tribunal considered the additions in the gad account and the addition to the gross profit under the common heading of gross profit. The Tribunal agreed with the orders of the lower authorities that the wage register could not be accepted nor could it be stated that the various claims were entirely genuine. The Tribunal itself inspected the unpaid register and agreed with the finding of the Appellate Assistant Commissioner that it could not be said to have been maintained in the normal course of the business. That being the position, the Tribunal held that the book result had been rightly rejected. In this year also, it restricted the addition on both the above accounts by applying a gross profit rate of 3 per cent. as was done in the assessment year 1967-68. On that working, the addition was restricted to Rs. 30,000.

8. On those facts, the following question has been referred to this court u/s 256(2) :

"Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal in holding that 3 per cent. Gross profit was reasonable and accordingly maintaining to the extent of Rs. 28,000 for the assessment year 1967-68 and Rs. 30,000 for the assessment year 1970-71 only the additions made by the Income Tax Officer and reduced by the Appellate Assistant Commissioner in the trading account of the assessee during the year (sic) ?"

9. The only question is whether there was any material before the Tribunal in holding that 3 per cent. gross profit was reasonable. This is essentially a question of fact. The Tribunal has found that the assessee had earned a gross profit of 3.56 per cent. and 3.39 per cent. in the assessment years 1965-66 and 1966-67. The Tribunal has further observed that there was no reason for a steep fall in the rate of profit in view of the rising trend of the prices in the market throughout the period. It adopted a rate of 3 per cent. as gross profit.

10. It is submitted by Mr. Das, the learned advocate for the assessee, that the Tribunal did not take into account that there was a Government order restricting the rate of profit and the profit earned by the brother of the assessee carrying on the same type of business.

11. The Tribunal considered that aspect of the matter and held as follows :

"The question, however, arises whether the gross profit shown by the assessee is reasonable. Obviously, it is not as compared to the earlier two years. The claim of the assessee was that the books of account could not be rejected as they had been properly maintained and, secondly, that it could not charge a higher rate of profit in view of the Government''s order and moreover, in the case of assessee''s relative, a lower profit had been accepted. None of these contentions can be accepted by us. No evidence appears to have been led before the Appellate Assistant Commissioner in support of the fact that the book result could not be rejected. Similarly, besides a bare statement that the books had been properly maintained nothing else was stated. The fact that there was a Government order restricting the rate of profit was also not argued before the Appellate Assistant Commissioner or before the Income Tax Officer. We cannot allow this point to be taken before us for the first time as it is clearly an afterthought. The case of the assessee''s relative can also not be looked into by us at this stage as the facts in that case are not available to us in detail nor do we know the nature of his business. It is possible that his machinery, administration and managerial skill might be inferior to that of the assessee. Apparently, there is no reason for such a steep fall in the rate of profit in view of the rising trend of the prices in the market throughout the period."

12. We are, therefore, of the view that the Tribunal came to a correct conclusion and that it does not call for any interference.

13. We answer this question in this reference in the affirmative, against the assessee and in favour of the Revenue.

14. There will be no order as to costs.