
(2004) 08 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 118 of 2004

Hargopal Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 145(2), 260A

Citation : (2004) 191 CTR 168 : (2005) 273 ITR 507

Hon'ble Judges : N.K. Sud, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—This appeal is directed against the order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short the "Tribunal"), dt. 16th Dec., 2003 relating to asst. yr. 1996-97.

2. Assessee derives income from manufacturing and sale of sweets and snacks. For asst. yr. 1996-97, he filed his return declaring an income of Rs. 3,96,720. The AO noticed that the assessee had failed to supply item-wise details regarding consumption of material used for manufacturing of its products on the ground that it was not possible to maintain such records in this line of business. Assessee also could not produce stock register in respect of consumption and production of material consumed and sold. The AO was of the view that it was not possible for him to compare the input with output which was vital for determination of correct income. He further noticed that in the year under consideration assessee had shown a gross profit rate of 22.5 per cent. whereas the Tribunal in the case of the assessee for asst. yr. 1989-90 had upheld the application of GP rate of 25 per cent. Even in asst. yr. 1993-94, the AO had applied the GP rate of 25 per cent. In view of these circumstances, the AO rejected the books of the assessee by invoking the provisions of Section 145(2) of the IT Act, 1961 (for short the "Act"), and applied a GP rate of 25 per cent on

the total sales of Rs. 43,86,556. Accordingly, he made an addition of Rs. 1,09,817.

3. Aggrieved by the order of the AO, assessee preferred, an appeal before the CIT(A) which was rejected. On further appeal, the Tribunal also upheld the findings of the AO.

4. Mr. P.C. Jain, learned counsel for the appellant, contended that in the absence of any defects pointed out by the AO in the books of account regularly maintained by the assessee, the same could not be rejected merely for want of maintenance of stock register. He further pointed out that there was no basis for application of gross profit rate of 25 per cent against 22.5 per cent as declared by the assessee.

5. A perusal of the order of the Tribunal shows that rejection of books of account is not based solely on the absence of stock registers. It has been observed that no quantity-wise details had been maintained and as such it was not possible to compare the input with the output. It was also noticed that the sales at the retail counter were being conducted on the basis of small slips in place of regular sale bills and the accounts were audited on the basis of slips only. These defects coupled with the low gross profit rate as compared to the gross profit rate applied in the earlier years, the Tribunal was of the view that the books of account had been correctly rejected. The Tribunal further held that the gross profit rate of 25 per cent as applied by the AO was based on the past history of the case and in the absence of any distinguishing feature, the same could not be disturbed.

6. No infirmity has been pointed out in the above-mentioned findings of the Tribunal. Regarding the estimate of gross profit rate, valid reasons have been given for adopting a rate of 25 per cent. What should be the gross profit rate is essentially a question of fact. In *Ved Prakash Vs. Commissioner of Income Tax*, , this Court has held that when books of account maintained by the assessee are not verifiable, the element of estimate is unavoidable for determination of the income of the assessee. In the -appellate jurisdiction u/s 260A of the Act, this Court normally does not interfere by substituting its own estimate in place of the one of the Tribunal unless it is shown that the estimate of the Tribunal could not possibly be reached. Thus, we are satisfied that the findings recorded by the Tribunal are pure findings of fact and do not give rise to any substantial question of law for interference by this Court.

The appeal is, accordingly, dismissed in limine.