(2010) 01 CHH CK 0004

In the Chhattisgarh High Court

ITO — APPELLANT

Vs

Shri Bhagwati Prasad Raika — RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:
Bankers Books Evidence Act, 1891 — Section 4
Income Tax Act, 1961 — Section 250, 260A, 69B

Citation : (2010) 01 CHH CK 0004

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—This Income Tax appeal u/s 260A of the Income Tax Act, 1961 (in short "The Act") preferred by the revenue against the order (Annexure A/3) of the Income Tax Appellate, Tribunal, Nagpur Bench, Nagpur (in short "Tribunal") has been admitted on 20-3-2006.

2. The only question, which arises for adjudication of this appeal, is whether the learned CIT(A) and the Tribunal were justified in deleting the addition made by the assessing officer on the ground that the excess stock, as returned to the bank, was corresponding to the sales not declared to the bank in the form of sundry debtors, the assessee has only availed extra credit facility, which did not relate to the discrepancy in stock?

3. Briefly stated, facts of the case, as projected in the impugned order of the Tribunal, are that the assessee is a trader in iron and steel. The assessee maintained regular books of accounts including stock register etc. on computer. Books of accounts were also produced before the assessing officer (in short "AO") for examination. The AO enquired from the bankers of the assessee and obtained copy of stock statements submitted monthly by the assessee to the banker against the facility of CC loan. The AO also obtained quantitative details of stock from the assessee as per the records of the assessee. The AO compared stock position as per records of the assessee with that shown to the bank every

month and found that there was excess stock shown to the bank. The peak difference was in January, 2003 to the tune of 162.750 metric ton. The AO, thus, concluded that the assessee had kept difference of stock outside the books of accounts, valued peak difference of 162.75 metric ton @ Rs. 13,200 pre metric ton and accordingly, made addition of Rs. 21,48,300 u/s 69B of the Act, relying on the decision of Guwahati High Court in the matter of Dhansiram Agarwalla Vs. Commissioner of Income Tax, , against which SLP filed by the assessee was also dismissed (204 ITR 45-46 st.).

4. The assessee went up in appeal and CIT(A), after considering the explanation of the assessee that in the bank statement, the assessee had shown less value of sales and reported more stock; excess stock shown to the bank was attributable to less sales shown to the bank and thus, source of excess stock shown to the bank was fully explained as available from the books, forwarded a copy of submission made by the assessee to the AO for his comments as per order u/s 250(4) of the Act. The AO submitted that the assessee had shown less sales to the bank, as a result of which higher stock was shown to the bank. However, this fact was not submitted by the assessee before the AO at the time of assessment.

CIT(A), considering the explanation of the assessee and remand report submitted by the AO, held that there was no excess stock available with the assessee at any point of time and therefore, there is no case for addition, and accordingly, the addition was deleted.

5. The revenue went up in appeal and the Tribunal affirmed the order of CIT(A).

6. Shri Rajeev Shrivastava, learned Counsel for the appellant/revenue, submits that the statement given to the bank by the assessee is admissible as evidence as per Section 4 of the Bankers Books Evidence Act, 1891 and CIT(A) and the Tribunal were not justified in accepting the explanation of the assessee contrary to the statement made by him before the bank.

7. Shri M.C. Jain, learned Counsel for the respondent/assessee, submits that from perusal of the orders of CIT(A) and the Tribunal, it is manifestly clear that both the forums below after careful scrutiny of the record, including the books of accounts and the bank statement, and further on the basis of remand report by the AO, have arrived at a conclusion that there was no excess stock available with the assessee at any point of time. The aforesaid finding of CIT(A) and the Tribunal is a ending of fact and no question of law, much less any substantial question of law, arises for adjudication of this appeal.

8. Relying upon the decision of the Delhi High Court in the matter of CIT v. Prem Singh and Co., (1986) 51 CTR (Del) 275 , it is argued that where the stock indicated by the assessees account books have been accepted by the Tribunal, this is a conclusion of fact from which no question of law arises.

9. We have heard learned Counsel for the parties and perused the orders of the AO, CIT(A) and impugned order passed by the Tribunal.

10. The undisputed facts, as detailed above, are that the AO made addition on the basis of difference in stock as appeared in the books of accounts and the monthly statement made by the assessee to the bank in CC account. CIT(A) considering the explanation of the assessee that the inflated stock was shown in the statement before the bank by reducing the sales figure and there was no discrepancy in the stock if the sales figure and balance of stock are considered in the bank statement as well as in the books of accounts, remanded the mater along with copy of submission made by the assessee before CIT(A) to the AO as per order u/s 250(4) of the Act, and this fact was, subsequently, confirmed by the AO.

11. In Prem Singh & Co. (supra), an identical question arose before the Delhi High Court, wherein the Tribunal deleted the addition made on the basis of difference in the position of stock as disclosed by books of accounts and as shown in the account of stock hypothecated with the bank, after considering the prevailing practice of filing inflated lists for the purpose of getting a loan and also considering that for the purpose of a loan, the stock would be valued at market price, whereas in the books it would be valued at cost, the High Court held that no question of law arises as the stock indicted by the assessees account books have been accepted by the Tribunal and this is a conclusion of fact from which no question of law arises.

12. In the instant case, we are of the opinion that both the appellate forums, after considering the books of accounts of the assessee, held the explanation offered by the assessee as proper and recorded a finding of fact that there was no excess stock available with the assessee. The finding, so recorded by both the forums below, does not give rise to any question of law, much less any substantial question of law. The appeal is without any substance, the same deserves to be dismissed and is, accordingly, dismissed.

No order as to costs.

