(2008) 05 RAJ CK 0049

In the Rajasthan High Court

Kay Polyplast Ltd. APPELLANT

Vs

Additional Commissioner of Income Tax RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:
Income Tax Act, 1961 — Section 145, 260A

Citation : (2008) 05 RAJ CK 0049

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Judgement

N.P. Gupta, J.—This appeal has been filed by the assessee, against the judgment of the learned Tribunal, partly allowing the cross-objections of the assessee, and remanding the matter to the Commissioner (Appeals). The remand has been made on the aspect of GP rate. However, the learned Commissioner (Appeals), and the learned Tribunal, upheld the rejection of books of account, and resorting to provisions of Section 145(1) of the Income Tax Act, 1961, challenging which aspect this appeal has been filed.

2. The appeal was admitted vide order dated 22-5-2006, by framing following substantial question of law:

Whether on the facts and circumstances of the case, the learned Tribunal is justified in upholding the order passed by the learned Commissioner (Appeals) by confirming the rejection of books of account u/s 145(1) of the Income Tax Act, 1961 by the assessing officer is justified and correct?

3. The matter was heard for quite a long time. A perusal of the order of the Commissioner (Appeals) shows, that rejection of the books of account has been upheld, mainly on the ground, that wastage percentage from fabric to bags is as high as 12.1 per cent, as compared to other cases, in which it is only 2.49 per cent. The learned Commissioner (Appeals) appears to have compared the case of M/s Kandhari & Kandhari (P) Ltd. The assessing officer has also considered purportedly comparable cases, being M/s Chittor Poly Feb and Kandhari &

Kandhari (P) Ltd., and found, that the assessee has declared GP rate of 8.5 per cent only, and concluded, that books of account did not disclose a true and proper income.

4. Arguing the appeal it was contended, that for rejection of books of account, the assessing officer should not be satisfied, about correctness and completeness of the account of the assessee, which precisely is not the finding of the assessing officer. Then, it was submitted, that from the balance sheets etc., already available with the assessing officer, it Is clear, that the percentage of waste, rendered in the manufacturing process, is practically consistent from the year 1988-89 onwards, though in the year 1987-88, it was as high as 23.41 per cent, and for all other years, this extent of wastage, as shown in the books of account, has been accepted by the assessing officer, and therefore, there was no justification for rejecting the books of account for the assessment year in question only. Then, learned Counsel also tried to show, that in cases of other industries, situated at Udaipur itself, manufacturing the same product, and practically employing the same manufacturing process, are also showing the extent of wastage, around the one, as shown by the assessee.

5. It may be observed here, that in this appeal, u/s 260A, it may mot be open to us, to receive fresh evidence, as attempted by the learned Counsel for the. appellant, and thereby entering into the process of reappreciating the evidence, and arrive at a different conclusion. But, then, in any case, the fact does remain, that it prima facie appears, that in the case of the assessee itself, the respondent department has accepted the percentage of wastage, as shown by the assessee from the year 1987-88 onwards, and the percentage of wastage as shown from 1988-89, does not bear much fluctuation, and it is not shown, that the books of account of the assessee, for other years have been rejected, rather it is stated by the learned Counsel for the appellant, that in other years the books have been accepted.

6. Thus in our view, there is a million dollar circumstance to show, that before rejecting the books of account, learned assessing officer did not take into account, other relevant attending circumstances, including the consistent wastage percentage, shown by the assessee, and the same having been accepted by the department.

7. In view of the above, we think it appropriate, to set aside the impugned order, and direct the learned Commissioner (Appeals) to decide the matter afresh, after giving opportunity of hearing to the assessee, to show the comparable figures of wastage percentage, rendered in the manufacturing process of other industries, involved in manufacturing ''identical product, and employing identical process of manufacturing, and to satisfy the learned Commissioner (Appeals), about the wastage percentage, shown by the assessee, during the past assessment years, and that having been accepted by the revenue, and then to consider the impact of the above, if established by the assessee, on the question, as to whether the books of account of the assessee, are required to be rejected or not.

8. Accordingly, the question, as framed, is answered in negative, In favour of the assessee, and against the revenue. The impugned orders of the learned Tribunal, and the learned Commissioner (Appeals) are set aside, and the matter is remitted back to the learned Commissioner (Appeals), as above, for deciding the matter afresh. Parties shall appear before the Commissioner (Appeals) on 28-7-2008.

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