

(2004) 11 AHC CK 0084

In the Allahabad High Court

Case No : IT Appeal No. 84 of 2003 10 November, 2004

Mahabir Rice Mill,

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 10-11-2004

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2005) 145 TAXMAN 245

Hon'ble Judges : Vikram Nath, J; R.K. Agrawal, J

Bench : Full Bench

Advocate : S.D. Singh, for the Assessee Shambhoo Chopra, for the Revenue, for the Appellant;

Judgement

R.K. Agrawal, J

In the present appeal filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act), the appellant alleges that five substantial questions of law arise out of the order dated 4-12-2002, passed by the Tribunal, Allahabad, relating to the assessment year 1991-92.

2. Briefly stated, the facts giving rise to the present appeal are as follows:

The appellant is carrying on business of manufacturing of rice from paddy and its sale. During the course of assessment proceedings for the assessment year 1991-92, the assessing officer asked the appellant to intimate the basis of valuation of closing stock. The appellant stated that the valuation of the closing stock has been taken at the cost price. It had valued the common paddy @ Rs. 199.87 per quintal and fine paddy @ Rs. 200 per quintal. The assessing officer directed the appellant to give market rate of fine paddy and common paddy as on 31-3-1991, whereupon the appellant filed a letter from the Marketing Inspector in which supporting price for purchase of common paddy has been quoted @ Rs. 205 per quintal and fine paddy @ Rs. 215 per quintal. In the reply dated 14-12-1992, it had also been admitted that sometimes the purchase price

to be paid for paddy during the year is more than that fixed by the Government and the rate certified by the Marketing Inspector had been applied for valuation of closing stock for paddy. The assessing officer did not accept the value of the closing stock of common paddy and fine paddy as shown by the appellant. He adopted the valuation of the closing stock at the rates given by the Marketing Inspector, which resulted in an addition of Rs. 7,567 in the closing stock. The addition was upheld by the CIT(A). The further appeal before the Tribunal has also failed.

3, We have heard Sri S.D. Singh, learned counsel for the appellant, and Sri Shambhoo Chopra, learned standing counsel for the revenue.

4. learned counsel for the appellant has submitted that the appellant had valued the closing stock on the average cost price which is well accepted principle of valuation and, therefore, no addition was called for. Sri Shambhoo Chopra, learned standing counsel, has, however, submitted that the closing stock has to be valued on cost price or on market price according to the discretion of the assessee. It cannot be any price in between. He further submitted that the assessing officer has rightly applied the price certified by the Marketing Inspector while valuing the closing stock and the order needs no interference. He further submitted that the appeal does not raise any substantial question of law as it is concluded by the findings of fact.

5. Having heard the learned counsel for the parties, we find that the Tribunal has found that the appellant was not valuing the closing stock as per the average cost price. According to the Tribunal, the appellant while taking the closing stock at average cost price has also taken the value of opening stock as on 1-4-1990, whereas normally, the opening stock being purchase for earlier year is Utilized for manufacturing and it is inconceivable that the opening stock was available at the end of the year and, therefore, the value of the opening stock cannot be taken even for the purpose of determining the average cost which has been done by the appellant. It is no doubt true that the average cost price of the entire stock purchased in the course of the year can be taken as the value of the closing stock for determining the value of the closing stock at the end of the year but nonetheless it should be either average cost or actual cost. It cannot be, in any way, in between.

6. In the case of Chainrup Sampatram Vs. Commissioner of Income Tax, West Bengal, , the Apex Court has held as follows :

"It is wrong to assume that the valuation of the closing stock at market rate has, for its object, the bringing into charge any appreciation in the value of such stock. The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the time, of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions on which there have been actual sales in the course of the year showing the profit or loss

actually realised on the year's trading

7. In the case of *The Commissioner of Income Tax, Madras Vs. A. Krishnaswami Mudaliar and Others*, , the Apex Court has held as follows :

"We have already said that in England there is no provision which compels the tax officer to adopt in the computation of income the system of accounting regularly employed by the assessee. But whatever may be the system, whether it is cash or mercantile, as observed by Croom-Johnson, J, in a trading venture it would be impossible accurately to assess the true profits without taking into account the value of the stock-in-trade at the beginning and at the end of the year"

8. In the case of *CIT v. British Paints India Ltd.* : [1991]188ITR44(SC) , the Apex Court has held that for computation of the true profits of the year in the case of a trade or adventure, each year being a self-contained unit, the value of the stock-in-trade at the beginning and at the end of the accounting year, and by ascertaining the difference between them, has to be taken into account. It has further held that it is a well recognized principle of commercial accounting to enter in the P&L a/c the value of the stock-in-trade at the beginning and at the end of the accounting year at cost or market price, whichever is lower.

9. In the case of *United Commercial Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal-III, Calcutta*, , the Apex Court has held that for valuing the closing stock it is open to the assessee to value it at the cost or the market value whichever is lower.

10. Applying the principle laid down in the aforesaid cases to the facts of the present case, we find that the Tribunal has recorded categorical finding of fact that the appellant has not valued the closing stock at average cost price as it has also taken into consideration the value of the opening stock as on 1-4-1990, whereas normally, the opening stock being purchase for earlier year is utilized for manufacturing and it cannot be conceived that it was available at the end of the year. The principle of "last come first go" should apply. In this view of the matter, we do not see any infirmity in the order of the Tribunal.

11. Thus, on the finding recorded by the Tribunal that the valuation of the closing stock was not on the average cost price, we are of the considered opinion that the assessing officer was justified in taking the price submitted by the Marketing Inspector for valuation of the closing stock.

12. In view of the foregoing discussions, we do not find any merit in this appeal and it is accordingly dismissed. However, there shall be no order as to costs.