

(2006) 10 RAJ CK 0047
In the Rajasthan High Court

Malani Ramjivan Jagannath	Vs	APPELLANT
Assistant Commissioner of Income Tax		RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2007) 207 CTR 19 : (2009) 316 ITR 120 : (2007) 163 TAXMAN 731

Hon'ble Judges : Rajesh Balia, J;Gopal Krishan Vyas, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard the learned Counsel for the parties.

2. At the time of admission of this appeal u/s 260A of the IT Act, 1961, following question was framed as substantial question of law:

Whether, in the facts and circumstances of the case, once it was accepted by the assessing authority that heavy loss to the tune of Rs. 6,45,620 has been caused to the assessee in the business of Supari, accepting the explanation furnished by the assessee that the total fall in the GP rate of the assessee is due to heavy loss in one of the segments of his business, it was reasonably open for the Tribunal to have restored the order of assessing authority, rejecting the result shown by the assessee on the total business by separating the business of Supari and applying thereto increased GP rate. On the turnover of remaining business on the basis of last year's result which included the turnover of Supari business also and to arrive imaginary estimated figure of GP from other business only and thus, reducing net loss computed by the assessee on overall business conducted by him.

3. The facts of this case are that the assessee-appellant is doing business of trading in Pan Masala and other connected commodities. The assessee has furnished return of income showing Rs. 4,48,280 as taxable income along with audit report.

4. The AO found that purchases and sales were properly vouched and verifiable though stock register was not kept, but the assessee had furnished inventories of opening and closing stocks which were not found to be incorrect. It also found that position regarding books of account continued to be same as in the past. Thus, the inward carriage, loading and unloading and transportation expenses were partly unvouched and unverifiable. With this admitted position, the AO noticed that there is fall in GP rate in the business as a whole as compared to GP rate shown by the assessee during last asst. yr. 1991-92. The assessee has shown in the previous year GP rate of 4.63 per cent by taking entire business as a whole, but this year he has shown GP rate of 2.38 per cent only. With this premise, he decided to reject the books of account and asked for explanation of the assessee about the fall in GP rate.

5. The assessee has mainly dealt with sales-tax paid goods account wherein turnover was Rs. 2,70,57,317. In the sales-tax paid goods account, the GP rate has improved from 4.5 per cent to 4.8 per cent current year.

He also informed that the turnover in the trading account of 12 per cent taxable, 6 per cent taxable, ST-17 taxable account and 5 per cent taxable account was nominal and had hardly any effect on the consolidated turnover and GP rate. Fall in the GP rate was stated to be due to heavy loss suffered in 10 per cent taxable Supari account in which the assessee has suffered loss of Rs. 6,45,620 on sale of 220 bags of supari being difference in purchase price and sale price. The assessee has also stated that Pan-Masala had become very common now-a-days so there was boom in this trade and various brands and products had come in the market. In the circumstances, he could not increase his sale prices in the face of cut-throat competition, whereas the cost price had gone up as per normal hike in the price. In spite of such stiff competition, he had not only maintained GP rate in normal trading but increased the turnover also by putting up their best. In the circumstances, he had submitted that the trading results shown were correct and should be accepted.

6. The AO had also accepted this part of explanation about there being stiff competition in the trade and loss suffered in sale of 220 bags of Supari. In these premises, the AO while rejecting the books of account on the basis of GP rate relating to total turnover had segregated STP sales account, 12 per cent taxable, 6 per cent taxable account ST-17 taxable and 5 per cent taxable account having nominal turnover 10 per cent taxable account, the AO computed 10 per cent taxable income separately by applying 4 per cent GP rate on estimated turnover of Rs. 67,10,000 and from said result allowed deduction of loss sustained in Supari consignment as claimed by the assessee. By increase in estimated sale and applying estimated GP rate, addition of Rs. 1,17,956 was made. In addition thereto additions were made in respect of each of the expenses account on estimate basis.

7. The CIT(A) on appeal found that there being no change in the system of books of account, sales and purchases being fully vouched and explained and

inventories of stock having been produced and not found to be incorrect and the AO, accepted the explanation about the sustenance of loss and stiff competition which may affect GP rate, the AO was not justified in applying GP rate to the estimated turnover. However, it was found that since the stock register was not maintained, therefore, some addition of amount needs to be sustained. Consequently, out of the additions made in the trading account on the basis of applying GP rate, addition of Rs. 17,956 was sustained. The CIT(A) also did not disturb the disallowance of expenses under various accounts except to the extent of Rs. 1,000 in ship expenses.

8. On further appeal by the Revenue before the Tribunal, the Tribunal after reproducing the orders from ITO's and CIT's order held that elaborate working given by the AO in his order was not fully appreciated by the CIT(A) and sustained the addition made by applying 4 per cent GP rate. However, the Tribunal accepted that there could not be any estimation when the turnover was duly vouched and was not found to be incorrect and sustained GP rate of 4 per cent only in respect of turnover shown by the assessee. In the aforesaid circumstances, this appeal is before us.

9. The trading account produced before the AO was placed for our perusal which shows that in each trading account, only four entries were there of opening stock, purchase on debit side, sales and closing stock of credit side. The quantum and value of purchases and sales had not been in dispute in as much as they were held to be fully vouched. Value of opening stock also cannot be disputed as it came from closing stock of previous year. The inventories of closing stock was also not found to be incorrect. That is to say actual stock position was not in dispute. The previous year's books of account were not found to be incorrect.

10. In the face of these undisputed facts and circumstances, the Tribunal in our opinion could not have interfered with the order of CIT(A). In doing so, it had ignored all admitted facts noticed by us above, in the face of which there was no occasion for the AO to have resorted to estimate method. The GP is primarily result of excess of sales over purchases, opening stock, closing stock, the unsold stock at two terminals is only balancing factor. Admittedly out of this four components of trading result, there could not have been any ground for the Revenue to arrive at different result. So far as closing stock is concerned, inventories of existing stock were not found to be incorrect by the AO i.e. that position of stock as shown in the account books was not incorrect. There being no dispute about the sales and purchases, non-maintenance of stock register lost its significance so far as arriving at GP is concerned. Therefore, the CIT(A) was right in his reasoning about admitted state of affairs. Resorting to estimate of GP rate was founded on no material. It was merely a case of making certain additions on the basis of certain defects pointed out by the AO and which he has shown in different account by giving margin of unvouched expenses. He has disallowed certain expenses.

11. The Tribunal committed basic error in not appreciating the reasoning given,

by the CIT(A). It is trite to say that in the facts and circumstances of present case, account books are maintained as they were ordinarily maintained years after years and which were found to yield a fair result. Mere deviation in GP rate cannot be a ground for rejecting books of account and entering realm of estimate and guesswork. Lower GP rate shown in the books of account during current year and fall in GP rate was justified and also admitted by the AO as well as CIT(A) as well as the Tribunal. Therefore, fall in GP rate lost its significance. Having accepted the reason for fall in GP rate, namely, stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of account was justified nor resort to substitution of estimated GP by rule of thumb merely for making certain additions. We are, therefore, of the opinion that the findings arrived at by the Tribunal suffers from basic defect of not applying its mind to the existing material which were relevant and went to the root of the matter. When all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of account. We are, therefore, unable to sustain the order of the Tribunal.

12. Accordingly, the appeal is allowed. The order of the Tribunal is set aside. The order passed by the CIT(A) is restored. No order as to costs.