(2007) 10 MP CK 0001

In the Madhya Pradesh High Court

Man Mohan Sadani APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (2008) 304 ITR 52 : (2010) 188 TAXMAN 277

Hon'ble Judges : R.S. Jha, J;R.S. Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Shri G.N. Purohit, learned senior counsel with Shri A. Oswal learned Counsel for the appellant.

2. The appellants has filed this appeal being aggrieved by the order dated July 1, 2005, in I.T.A. No. 55(JAB)/2002 and I.T.A. No. 62 (JAB) 2002 which relate to the assessment year 1997-98. The appeal was admitted for hearing on the following questions of law:

(i) Whether, in the facts and circumstances of the case, the Tribunal was correct in law in holding that the entire sales were liable to be assessed as income even when the purchases were recorded in the books of account?

(ii) Whether the learned Tribunal is legally correct in not deleting the addition of Rs. 1,00,000 on the facts of the case even after recording a finding that cash was brought from home but treating it covered by the addition of undisclosed sales?

3. As far as the first substantial question of law is concerned, it is submitted by learned senior counsel for the appellant that the Income Tax Appellate Tribunal in the impugned order has misinterpreted, misread and misapplied the judgment of this Court reported in the matter of Commissioner of Income Tax Vs. Balchand Ajit Kumar, and on that basis has erroneously held that the entire sales made in the relevant period were liable to be assessed for the purpose of Income Tax. It

is submitted that the judgment of this Court referred to and relied upon by the Income Tax Appellate Tribunal is in fact to the exactly opposite effect as this Court has held that the assessing authority must determine the net income of the assessee by deducting the costs element before assessing the person to tax. It is specifically stated by learned senior counsel for the appellant that this Court has not recorded any finding to the effect that the entire sale proceeds be assessed to Income Tax as has been held by the Income Tax Appellate Tribunal in the impugned order.

4. We have carefully perused the judgment of this Court in the case of Commissioner of Income Tax Vs. Balchand Ajit Kumar, dated April 14, 2003. From a perusal of the judgment it becomes clear that the part relied upon and quoted by the Income Tax Appellate Tribunal is in fact portion of the order of the Gujarat High Court reported in CIT v. President Industries [2002] 258 ITR 654 as quoted by this Court and not the operative part of the judgment of this Court in Commissioner of Income Tax Vs. Balchand Ajit Kumar, . The relevant part of the judgment in the case of Commissioner of Income Tax Vs. Balchand Ajit Kumar, is reproduced below for properly appreciating the contention of learned senior counsel for the appellant (page 612):

On appreciating the rival submissions raised at the Bar, we have carefully perused the order passed by the Commissioner of Income Tax (Appeals) and also that of the Tribunal. It is not disputed that the undisclosed income was Rs. 2,57,000. The sole question that arises for consideration is whether the entire income has to be treated as profit or there should be adoption of a method of net profit income. In the case of CIT v. President Industries [2002] 258 ITR 654 the High Court of Gujarat in a similar matter came to hold as under (page 655):

Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application u/s 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales.

We are in respectful agreement with the aforesaid opinion inasmuch as the total sales cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case, the net profit rate of five per cent. has been applied. We do not think it appropriate that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach.

5. From a perusal of the aforesaid dicta of this Court, it is apparent that this Court while deciding the matter has held that the total sales cannot be regarded as profit of the assessee and the net profit rate which was adopted in that case has to be adopted and if it is so adopted it cannot be said that the approach of the assessing authority is perverse.

6. Apparently, this Court in the said judgment has not held that the entire sale proceeds have to be or should be regarded as profit or treated as undisclosed income of the assessee. On the contrary, this Court has categorically held that it is the net profit rate which has to be adopted in such cases.

7. In the circumstances, we are of the considered opinion that question No. 1 framed by this Court deserves to be and is answered in favour of the assessee and against the Revenue and it is held that the entire sale proceeds of the assessee should not be added to his income and that the Tribunal has erred in doing so by misreading the judgment of this Court in the case of Commissioner of Income Tax Vs. Balchand Ajit Kumar, .

8. As far as question No. 2 is concerned, in view of answer to question No. 1 and in view of the decision of the Income Tax Appellate Tribunal in paragraph 17 of the impugned order, this question does not survive for consideration in the present case. In view of the aforesaid, the appeal is allowed.