(2014) 11 GUJ CK 0014

In the Gujarat High Court

Case No : Tax Appeal No. 200 of 2003

Mayank Diamonds Pvt. Ltd. APPELLANT

Vs

I.T. Officer RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2014) 11 GUJ CK 0014

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : J.P. Shah, Advocate for the Appellant; Sudhir M. Mehta, Advocate for the Respondent

Judgement

K.S. Jhaveri, J.—Being aggrieved and dissatisfied with the impugned judgement and order dated 18.10.2002 passed by the Income Tax Appellate Tribunal, ''B'' Bench (Tribunal) in Income Tax Appeal No. 341/Ahd/2002 for the assessment year 1997-98, the revenue has preferred the present tax appeal with the following substantial question of law:

"Whether the Tribunal was right in estimating the gross profit of 12.5% against the gross profit of 1.03% shown by the assessee without recording any cogent and convincing reasons in support thereof"

2. The assessee company is engaged in trading of polished diamond. The assessee company showed turnover of Rs. 1,86,36,447/- and gross profit of Rs. 1,93,105/- which comes to 1.03%. During the assessment proceedings, the details of purchase was called for and the list of purchase parties was submitted by the company. During the assessment proceedings the director of the company explained that there is no bill issued by purchase parties. The Director of the assessee company was summoned under section 131 and statement was recorded. The Assessment Officer came to the inference that purchases amounting to Rs. 1,68,48,663/- are bogus and he added this amount in the computation of the assessee company''s income.

2.1 Being aggrieved by the same, the assessee preferred appeal before CIT(Appeals) but the said appeal came to be dismissed. The assessee company thereafter preferred appeal before the Tribunal after hearing the parties, partly allowed the appeal by directing the Assessment Officer to make addition of Rs. 21,36,451/- at the rate of 12.5% of gross profit as against addition of Rs. 1,68,48,663/- made in the assessment order. Being aggrieved by the same, the present appeal is preferred.

3. Mr. J.P. Shah, learned advocate appearing for the appellant company submitted that the Tribunal erred in rejecting 1.03% of gross profit shown by the appellant on a turnover of Rs. 1,86,36,447/- and further erred in hiking it to 12.5%. He submitted that the Tribunal failed to appreciate that the accounts of the appellant were not only closed and adjusted but also audited. He has relied upon a decision of the Income Tax Appellate Tribunal, Ahmedabad Bench in the case of Pankaj Diamond v. Assistant Commissioner of Income Tax reported in [2010] 5 ITR (Trib) 469 wherein the Tribunal has observed that as no specific defect in the various expenses claimed by the assessee in the profit and loss account could be pointed out by the Department, the Commissioner (Appeals) was not justified in arbitrarily applying the rate of net profit of three per cent in making the addition. He contended that in the present case the Tribunal has applied 12.5% which is grossly on the higher side.

4. Mr. Mehta, learned advocate appearing for the respondent supported the impugned order and submitted that the Tribunal has rightly observed that addition at the rate of 12.5% is applicable in the present case because the appellant company has siphoned off large amount by showing bogus and fictitious addresses. He submitted that the present appeal lacks merits and therefore deserves to be dismissed.

5. We have heard learned advocates for both the sides and perused the orders passed by the CIT as well as the Tribunal. As a result of hearing and perusal of records, it is borne out that the average profit which has been considered for this industry is around 3 to 7%. The Tribunal in the instant case has directed addition at the rate of 12.5% which in our opinion is on the higher side. Learned advocate for the appellant has fairly conceded that excess 7% is on higher side and that at the most 3% may be applied. In that view of the matter, going by the peculiar facts of the present case we are of the view that ends of justice will be met by taking mean of maximum and minimum of the profit rate which comes to 5%. Therefore, we think it fit to direct the Assessing Officer to apply 5% G.P. rate as the rate of 12.5 % is drastically higher and 1.03% is drastically lower. Gross profit rate of 5% is the average rate of the industry and we think it fit to make addition on account of 5% gross profit rate. The addition be made accordingly. We therefore answer the question raised in the negative i.e. against the revenue and in favour of the assessee.

6. In the premises aforesaid, appeal is allowed to the aforesaid extent. Gross profit rate of 5% be applied and income of the assessee be estimated

accordingly. The impugned judgement passed by the Tribunal is modified accordingly.

