

(2016) 07 RAJ CK 0104
In the Rajasthan High Court
Case No : Income Tax Appeal No. 210 of 2015

M/s Rajaram Rajendra Bhandari & Party (Ajmer Group)	APPELLANT
Vs	
The CIT	RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Income Tax Act, 1961 — Section 144, 145(3)

Citation : (2016) 388 ITR 259

Hon'ble Judges : Mr. M.N. Bhandari and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. Naresh Gupta and Mr. P.K. Kasliwal, Advocates, for the Appellant;
Mr. Nikhil Simlote, Mr. OP Pareek, Mr. Anuroop Singhi and Mr. Sandeep Pathak,
Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ranka, J.—The instant appeals at the instance of assessee, under Section 260A of the Income Tax Act, 1961, are directed against the orders dated 21.7.2014 and 17.7.2015 passed by Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. Assessment years involved are 1997- 98 and 2000-01. The appellants are association of persons.

2. We may take into consideration the facts of the admitted appeal, namely DBITA No. 210/2015, as identical questions are involved, for the sake of convenience. The following questions were admitted by this Court :-

"(i) Whether the Id. I.T. Authorities below were justified in making/sustaining the concomitant of the rejection of the books of accounts under section 145(3) in view of the ratio laid down by this Hon'ble Court in case of CIT v. Gotan Lime Khanij Udhog reported in (2002) 256 ITR 243 (Raj.)?

(ii) Whether in the proceedings under section 145(3) with section 144 of the Act, addition of Rs. 1,20,00,000/- made without any basis of computation as also without establishing nexus thereof with the available facts and circumstances is

permissible in law?"

The other two appeals are at the stage of admission and since common controversy is involved in all the three appeals, with the consent of the parties, all the three appeals are being decided at this stage by this common order. This is second round of litigation.

3. Though we will be considering the facts from DBITA 210/2015, however, we give herein a comparative chart of the trading account in all the three appeals after examining the record of the appeals :-

D.B ITA No.

Sales declared by Assessee

Estimated sales by AO

Return of Income

Income Assessed by AO

Income by CIT (A)

Income by ITAT

210/2015

116,24,42,199

127,69,28,314

2,92,30,610(Loss), remanded by High Court to ITAT (22.1.2014). ITAT estimated total sales at 120,00,00,000 & trading addition @ 1% = 1,20,00,000

8,52,55,512

5,52,55,512

1,20,00,000

174/2014

4,36,30,771

4,66,07,139

2,32,516 remanded by High Court to ITAT, (20.1.2014). ITAT partially sustained additions made by AO / CIT (A)

40,26,800

Addition sustained 4,50,000

27,47,600

175/2014

4,01,25,231

4,29,02,803

2,04,390 remanded by High Court to ITAT, (22.1.2014). ITAT partially sustained addition made by AO / CIT(A)

41,49,300

Addition sustained 4,00,000

28,04,300

4. We may briefly refer to the facts in the first round of litigation that the assessee declared a turnover of Rs. 116,24,42,199/-, however, declared loss at Rs. 2,92,30,610/-. The Assessing Officer after rejecting the books of account, estimated the turnover as aforesaid and made a trading addition of Rs. 8,52,55,512/-. On an appeal by the assessee before the Commissioner of Income-tax (Appeals), resulted into reduction of the trading addition. On a further appeal by the assessee as well as the Revenue, resulted into reduction of application of estimated trading addition by the Tribunal, however, the Revenue having not been satisfied with the order of the Tribunal, filed appeal before this Court under Section 260A of the Act. This Court, after examining not only the case of the assessee but also in a bunch of cases, found that the order of the Tribunal was non speaking, without considering the facts, material and submissions of either sides, passed cryptic orders and, therefore, this Court in the case of CIT v. Ram Singh & Others (2014) 363 ITR 417 (Raj.), quashed the orders of Tribunal and remanded the matter to the Tribunal to revisit the issue afresh, de novo in accordance with the guidelines referred to in the judgment. Pursuant thereto, the Tribunal has passed orders in all the three appeals and have passed orders taking into account facts and material and after taking into consideration the arguments of both sides, which is assailed herein.

5. Learned counsel for the appellants have argued that the rejection of the books of account under Section 145(3) of the Act was not proper and on the material available on record the books of accounts could not have been rejected and provisions of Section 145(3) of the Act were not required to be invoked. It has further been contended that even if the books of account are rejected under Section 145(3) of the Act, it does not result into automatic addition. It has further been contended that some basis ought to have been taken into consideration by the Tribunal while applying of a particular rate or making of an addition. It had been vehemently contended that the assessee had declared a loss of Rs. 2,92,30,610/- and at-least the same ought to have been allowed when the loss had been proved and was in accordance with law.

6. Per contra, learned counsel for the Revenue contended that the order of Tribunal is just and proper and the Tribunal has taken into consideration several other cases while applying a particular rate. He further contended that rather the Revenue is aggrieved in as much only a net profit of only 1% had been applied

and even the turnover had been reduced, which was estimated on a reasonable basis by the AO. He further contended that the Tribunal has taken into consideration another connected case of the group of the assessee itself in the case of ACIT v. M/s Rajaram Manohrlal & Party (Kishangarh Bas Group) in ITA No. 688/JP/1998, where also certain percentage of rate was applied. He thus supported the orders of the Tribunal.

7. We have heard learned counsel for the parties and taken into consideration the impugned orders as well as the orders passed by the Tribunal in the first round as well as the orders of Lower Authorities.

8. In this case the assessee has shown a turnover of Rs. 116,24,42,199/- which was estimated by the AO after rejecting the books of account to an amount of Rs. 127,69,28,314/- which has now been reduced by the Tribunal to Rs. 120 crore. Be that as it may, even on a turnover of Rs. 116 crore which is as per assessee himself, the assessee showed a loss of Rs. 2,92,30,610/-, but neither before the Lower Authorities nor even before this Court the learned counsel for assessee could justify as to how a loss of almost Rs. 2,92,30,610/- was suffered. An assessee has to bring cogent material on record, and prove the reasons for suffering of a loss if the results are not fair or suffers a loss. A genuine loss will always have to be allowed in accordance with law. But we notice that before the three authorities no such evidence, material or reasoning was given about sufferance of loss.

9. Be that as it may, once the AO rejects the books of account, applies a particular gross profit rate or/net profit rate, the returned loss goes out of picture, rather it is effaced with what had been applied by the AO. Had there been a plausibly reasonable basis of suffering of a genuine loss, possibly the claim of the assessee could have been well justified and reasoned, but in a case like this when admittedly the books of account have been rejected by all the three authorities and even this Court found that the learned counsel at the time of arguing the appeal in the first round of litigation in the case of CIT v. Ram Singh & Others (supra), admitted about application of provisions of Section 145(3) of the Act, claiming that the loss is required to be allowed, in our view is not proper. To reiterate a point which was already considered by this Court about rejecting books of account under Section 145(3) of the Act, is not proper and still learned counsel for the appellants insisted that this Court in Ram Singh's case (supra) did not consider this issue.

10. This Court, while deciding the appeals in bunch of cases, namely M/s Chaturbhuj Manoj Kumar & Party v. CIT DBITA No. 684/2008 & others, vide order of even date, has noticed that the Tribunal in that case had taken into consideration 13 other appeals of identical liquor traders, and the reasoning of the Tribunal had been upheld by this Court. We have also considered all these issues as raised by the learned counsel for the appellants in the bunch of cases decided in the case of M/s Chaturbhuj Manoj Kumar & Party v. CIT (supra) by order of even date and for the reasons assigned therein which we adopt in this

order as well, we find no illegality or perversity in the impugned order. The learned counsel for the appellants has not been able to justify how even 1% net profit is excessive or unreasonable.

11. We may also notice that the argument of the learned counsel for assessee that loss is required to be set off, has no legs to stand, as even otherwise the justification for loss has not been proved by the assessee either before the Lower Authorities or before this Court as to how assessee would have suffered a loss on a declared turnover of about Rs. 116 crore, particularly in the line in which assessee is dealing. It is one of the rare cases where we have found that an assessee is declaring such a huge loss when we have come across majority of cases where most of the assessees have declared positive income. In our view, once net profit rate is applied, it takes into consideration the overall trading result, and trading account/profit and loss account as declared, goes out of picture and the resultant figure is the ultimate net income of the assessee.

12. We find no reason to deviate with the findings of the Tribunal in applying a net profit rate of only 1% to which we concur with the finding of the fact recorded by the Tribunal, which has also taken into consideration other similarly situated identical cases of liquor traders in the same line as that of the assessee/appellant.

13. In DBITA No. 174/2014 on a turnover of almost Rs. 4.36 crore, the assessee only declared an income of Rs. 2,32,516/-, which had no apparent basis and since the books of account were rejected, the AO after taking into consideration identical cases of liquor traders decided by the Tribunal and applied net profit rate. The Tribunal, after remand by this Court, has gone into the issue elaborately and has taken into consideration various factors, namely:-

- a) State Govt. policy for a particular area in a particular year may influence the results.
- b) Geographical conditions.
- c) Socio-economic conditions.
- d) Population mix of a particular area i.e. urban as well as rural.
- e) Arrangements amongst various wine contractors.
- f) Experience and availability of funds with the AOP members.
- g) Political conditions, natural prosperity or calamity.
- h) Tourists revolving the public in a particular area.

and has found as a finding of fact that insofar as country liquor is concerned, the income estimated by the AO was in accordance with other assessees who have disclosed higher net profit than the assessee and accordingly had applied net profit of 10% on "outgoings" of Rs. 2,54,76,139/- in the assessee's case. These are, in our view, finding of fact based on the material on record and since the

books of account have been rejected, the assessee had been unable to bring on record any cogent material or basis of the meager income of Rs. 2,32,516/- shown by the assessee on a turnover of almost Rs. 4.36 crore. We also adopt the same reasoning as in the other appeals referred to hereinbefore of M/s Chaturbhuj Manoj Kumar & Party (supra).

13.1. In the connected case, which is a sister concern of the same party i.e. DBITA No. 175/2014, also on a turnover of almost Rs. 4.01 crore, a meager income of Rs. 2,04,390/- which had no apparent basis, had been shown and since the books of account were rejected, the AO after taking into consideration identical cases of liquor traders decided by the Tribunal applied net profit rate. The Tribunal, after remand by this Court, has gone into the issue elaborately and has taken into consideration various factors, namely :-

- a) State Govt. policy for a particular area in a particular year may influence the results.
- b) Geographical conditions.
- c) Socio-economic conditions.
- d) Population mix of a particular area i.e. urban as well as rural
- e) Arrangements amongst various wine contractors
- f) Experience and availability of funds with the AOP members
- g) Political conditions, natural prosperity or calamity
- h) Tourists revolving the public in a particular area;

and has found as a finding of fact that insofar as country liquor is concerned, the income estimated by the AO that other assesseees have disclosed higher net profit than the assessee who had applied net profit of 11% on "outgoings" of Rs. 2,39,02,803/- in the assessee's case. These are, in our view, finding of fact based on the material on record and since the books of account have been rejected, the assessee has been unable to bring on record any cogent material or basis of the meager income of Rs. 2,04,390/- shown by the assessee on a turnover of almost Rs. 4.01 crore. We also adopt the same reasoning as in the other appeals referred to hereinbefore of M/s Chaturbhuj Manoj Kumar & Party (supra).

14. We have also taken into consideration the distinguishing features in the case of CIT v. Gotan Lime Khanij Udhyog (supra) rendered by this Court in the said bunch of cases (M/s Chaturbhuj Manoj Kumar & Party).

15. Accordingly, in our view, both the questions (supra) are answered against the assessee and in favour of the Revenue. Since we have already answered both the questions against the assessee, therefore, DBITA 174/2014 and 175/2014, have no merit being based essentially on finding of facts based on material evidence on record and other identical cases of liquor traders and no substantial question

of law can be said to arise out of the orders of Tribunal. We find no infirmity or perversity in the order impugned so as to call for interference of this Court.

16. Consequently, the appeals are dismissed.

17. A copy of this order be placed in each connected file.