
(2003) 05 RAJ CK 0120

In the Rajasthan High Court

Case No : Income Tax Appeal No. 3 of 2002 21 May 2003

Radhakishan Ramniranjan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 132, 143, 69

Citation : (2003) 132 TAXMAN 204

Hon'ble Judges : Y.R. Meena, J; Shashi Kant Sharma, J

Bench : Full Bench

Advocate : P.K. Kasliwal, for the Assessee R.B. Mathur, for the Revenue, for the Appellant;

Judgement

This appeal has been admitted in terms of the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in sustaining an addition of Rs. 85,000 as made by the assessing officer being unexplained investment in the purchases u/s 69 of the Income Tax Act, 1961 and whether the finding of the Tribunal is perverse ?"

2. This appeal is directed against the impugned order of the Tribunal dated 16-8-2001. The assessee appellant has raised the issue regarding addition of Rs. 85,000 being unexplained investment in the purchases made u/s 69 of the Income Tax Act, 1961.

3. The assessee derives income from semi wholesale business from iron and hardware. The relevant assessment year is 1990-91. The assessee declared income of Rs. 75,270. There was a search on 7-6-1989 u/s 132(1) of the Income Tax Act, 1961. Thereafter, regular assessment was made u/s 143(3) of the Act, inter alia, the addition of Rs. 85,000 is made on account of loose slips found at the residence of one partner of the assessee. That addition has been deleted by the Commissioner (Appeals). In appeal before the Tribunal, the Tribunal has sustained this addition as there was no addition on account of excess stock found

at the time of search. While considering the addition of Rs. 85,000, the Tribunal has discussed the material in para 5 of its order, which reads as under :

"Material on record has been perused with reference to case laws relied. There is no dispute that loose paper was found and seized from the possession, custody and control of Shri Ram Niranjana a partner of the appellant. The books of the appellant firm were also found from the possession of the said partner. The partners are the agents of the firm and their acts bind the firm in all respects as they have implied authority. The onus, therefore, was on the assessee firm to show that the seized loose paper did not belong to it or, that the transactions mentioned therein have not been transacted by it. This burden has not been discharged by the assessee. In fact, the assessing officer has recorded a finding that the assessee deals in all the items shown in the slip fiz. C.R.C. sheets etc. There is no evidence on record to show that Shri Niranjana had conducted any such business. This finding has not been reverted by the Commissioner (Appeals) nor any explanation has been offered by the assessee's counsel before us. There being no contrary material brought on record by the assessee to the finding of the assessing officer, we are constrained to hold the finding given by him. As a result, the decision arrived at by the Commissioner (Appeals) is found to be erroneous, more particularly when there is no surrender on account of excess stock found or sales made outside the books by the assessee-firm. However, the investment as found out by the Commissioner (Appeals) though the said paper is Rs. 85,000 and not Rs. 1,08,737 in view of return of goods and expenses etc. Besides this no error is found in the decision of the Commissioner (Appeals) in deleting the addition of Rs. 4,000 and Rs. 53,800 on account of unaccounted sales as the same were made by the assessing officer without any basis."

4. Learned counsel for the appellant submits that he surrendered the excess value of the stock found during the search as well as the excess cash found during the search. He also submitted the statement showing the cash that the stock found during the search and how much he surrendered out of that. He submits that the Tribunal has wrongly given the finding that there was no surrender on account of excess stock found during the search. If there is any doubt, the statement can be sent for verification to the Tribunal for fresh finding.

5. Mr. Mathur has not seriously objected if the statement as shown in the chart of brief facts, is sent to the Tribunal, as submitted by the learned counsel for the appellant.

6. Considering his submissions and limited controversy before it, in this appeal, whether the assessee has surrendered any amount on account of excess stock found during the search, the Tribunal should verify the fact whether he has surrendered that amount on account of excess stock found during the search. If he has surrendered any amount against the excess stock, then the very addition is not justified, therefore, Tribunal was required to verify the fact whether the assessee has surrendered Rs. 1,20,000 against the excess stock found during the search. If, from the record, it appears that he has surrendered Rs. 1,20,000

against the excess stock found at the time of search, then no addition is warranted on this account.

7. The Tribunal is directed to verify the fact whether the amount of Rs. 1,20,000 has been surrendered against excess stock found. If, on the basis of loose sheets, found during the search. Further whether the value of excess stock found exceed Rs. 1,20,000. If value of excess stock exceeds it will be open to the Tribunal to add the balance excess amount found on the basis of loose slips. If the excess stock is not exceeding the value of Rs. 1,20,000, then, no addition is warranted on this account as the amount surrendered on account of excess stock covers the amount of loose sheets found during the search.

8. In the light of the above discussion, the impugned order dated 16-8-2001 is set aside. The matter is sent back to the Tribunal for fresh finding whether there can be any addition on account of loose sheets found during the search.

The appeal stands disposed of.