
(2010) 08 RAJ CK 0163
In the Rajasthan High Court

Rajendra Prasad Subhash Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 133A, 143(1), 143(2), 144, 145

Citation : (2011) 237 CTR 382 : (2012) 344 ITR 533 : (2010) 194 TAXMAN 125

Hon'ble Judges : Jagdish Bhalla, C.J.; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This Income Tax appeal has been filed by the appellant-assessee challenging the judgment dated 20.03.2009, of the Income Tax Appellate Tribunal, Jaipur Bench "B" Jaipur, (for short, "the ITAT") whereby the ITAT upheld the judgment dated 26.03.2007 of the Commissioner of Income Tax (Appeals) Alwar (for short, "the CIT"), who in its turn, confirmed the assessment order passed by the Assessing Officer.

2. Factual matrix of the case is that on 06.05.2002 a survey u/s 133A of the Income Tax Act, 1961 (for short, "the Act") was conducted at the business premises of the appellant-assessee in which it was found that the books of account had been written only up to 26.04.2002 and no entries were thereafter made till the date of survey. The appellant- assessee, however, on 02.12.2003 filed its return of income declaring income of Rs. 6,69,050/- along-with audited balance-sheet, profit and loss account tax audit report dated 22.11.2003. Since the survey was carried out u/s 133A of the Act, the case of the appellant-assessee was selected for compulsory scrutiny by issuing notice to it u/s 143(2) on 06.05.2004, however, the jurisdiction of the case was transferred to Assistant Commissioner of Income Tax, Circle-2, Alwar, as the income of the appellant-assessee exceeded Rs. 5,00,000/- and therefore notice u/s 143(2) and 143(1)(ii) along-with query letter was issued to the appellant on 27.10.2005 by the said authority. The assessing officer i.e. the Assistant Commissioner, Income Tax,

passed an assessment order on 22.03.2006 thereby computing the income of the appellant at Rs. 7,94,420/-, on the ground that during the course of survey an unexplained cash to the tune of Rs. 2,95,000/- and unexplained stock to the tune of Rs. 2,28,086/- have been discovered and further the assessing officer disallowed the interest u/s 36(1)(iii) to the tune of Rs. 26,833/-. The appellant- assessee preferred an appeal on 28.04.2006 before the CIT (Appeals), Alwar, assailing the additions made by the Assistant Commissioner of Income Tax, Alwar. The appeal was, however, dismissed by order dated 26.03.2007. It was thereafter that the appellant- assessee preferred further/second appeal before the ITAT, Jaipur, which, by its judgment dated 20.03.2009, dismissed the same upholding the judgment of the CIT (Appeals) and the assessment order passed by the Assessing Officer. Hence, this appeal u/s 260A of the Act.

3. Shri Anant Kasliwal, learned Counsel for the appellant- assessee has argued that the learned ITAT and the authorities therebelow failed to appreciate that the appellant- assessee had furnished copy of the cash book before the assessing authority, which also included unexplained items. The entries in the cash book were made only up-to 26.04.2002, however, for subsequent period till the survey was conducted i.e. 06.05.2002, such entries could not be made because the accountant of the appellant- assessee was on leave. Cash balance as per the cash book as on 06.05.2002 was Rs. 4,13,744/- and, out of the same, a sum of Rs. 2,00,000/- was deposited in the bank account and balance cash was found during the course of survey.

4. Learned Counsel argued that stock lying in the godown was duly recorded in the books of account and as such the same was not undisclosed as alleged by the assessing officer. The unaccounted retail sales, recorded in the loose papers found during the course of survey, relate to the period from 26.04.2002 to 06.05.2002 and the same was properly recorded in the books of account which have been duly verified by the assessing officer. It was contended that the onus of verifying the entries made in the cash book after date of survey was on the assessing officer, who has utterly failed to discharge the same. Despite of this contentions raised, the ITAT has failed to examine them in their true perspective and erred in law in holding that the appellant- assessee failed to submit cogent explanation. The learned ITAT was wholly unjustified in rejecting books of account of the appellant- assessee invoking provisions of Section 145(3) of the Act. Merely because the books of account could not be written for a period of 10 days due to absence of accountant, such books could not be rejected for the entire period. Alternatively, though contrarily, it was argued that once the books of account were rejected and income of the appellant- assessee was calculated on estimated basis, non-recording of some entries in the books lost its relevance for the purpose of estimation of income.

5. Shri Anant Kasliwal, learned Counsel for the appellant- assessee further contended that revenue authorities have seriously erred in disallowing a sum of Rs. 26,833/- from out of assessee's claim of interest merely on the ground that

some of the funds available with the appellant-assessee were lent by it to its sister concern M/s. Shubham on interest free basis and without considering the aspect that same was received back in the same financial year.

6. The learned Counsel in support of his arguments relied on the judgments of Gujarat High Court in *M. Kantilal Exports v. Asstt. CIT (Guj)* (2010) 36 DTR 296 and Chattisgarh High Court in *CIT v. Vijay Kumar Kesar* (2010) 36 DTR 13.

7. According to the appellant-assessee following questions of law arise in the present case for determination by this Court:

(a) Whether the ITAT was justified in having confirmed the invocation of Section 69 & 69A in the present facts when the amounts under consideration were not only duly entered in the books of account when they were completed but were also duly surrendered by the appellant in its return of income?

(b) Whether the ITAT was justified in having upheld the dis-allowance of a part of the interest paid and claimed as an expense merely on the ground that no interest on a portion of the loans taken were extended to a sister concern on an interest free basis?

8. Shri Anant Kasliwal, learned Counsel for the appellant-assessee submitted that the revenue authorities were not justified in invoking the provisions of Sections 69 and 69A of the Act particularly when the entires under consideration were not only duly made in the books of account but they were completed and such income was also duly surrendered by the appellant-assessee in its return of income. It is submitted that when the appellant-assessee had declared the income and on that basis, filed the return of income and submitted the books of account in support thereof, the finding of the ITAT and the authorities therebelow that the appellant-assessee attempted to evade tax, is wholly pervers and same is liable to be set aside.

9. Per contra, Shri Sameer Jain, learned Counsel for the revenue opposed the appeal and argued that the appellant has utterly failed to give explanation at any time either during survey or at the time of assessment or even when he unsuccessfully filed two appeals - one before the CIT (Appeals) and another before the ITAT. Learned Counsel submitted that books of account were not properly maintained by the appellant-assessee which were rightly rejected by the learned assessing officer by invoking provisions of Section 145(3) of the Act. The assessing officer estimated the sale of the relevant period at rupees two crore and gross profit at 4.25%. He accordingly worked out the gross-profit at Rs. 8,50,000/- as against Rs. 8,09,939/- declared by the assessee and made a trading addition of Rs. 40,061/- in the income of assessee. The CIT (Appeals) affirmed the action of the assessing officer.

10. The learned Counsel submitted that during the course of survey, certain loose slips of sale transactions were found and yet the same were not recorded in the books of account. The appellant-assessee failed to submit any cogent

explanation therefor. The assessing officer also noted that the appellant had given advance of Rs. 2,50,000/- to its sister concern working under the name and stile of M/s. Subham Hotel on 08.05.2002 and had not charged any interest on such advance. He found from the account that the assessee had paid interest on unsecured loan and on the loans taken from the banks to the tune of Rs. 1,60,033/- during the said period. He accordingly worked out interest on amount of Rs. 2,50,000/- given by the appellant-assessee without interest to its sister concern M/s. Subham Hotel and held held that the interest to that extent was incurred for non-business purpose. He therefore disallowed the interest at the rate of 12% per annum on such amount at Rs. 26,833/-.

11. All these being findings of fact, are not open to interference and the appeal does not raise any question of law for adjudication by this Court. The cited judgments are distinguishable on facts. The appeal therefore deserves to be dismissed.

12. We have given our anxious consideration to the rival submissions of the parties and perused the material on record.

13. Whether or not the books of account were being properly maintained and all the entires about the sale transactions therein were made, are all questions of fact. All the authorities below have concurrently decided this issue against the appellant-assessee holding that during the period of survey, various sale transactions were not entered in the books of account and that certain sale transactions were found to be recorded in loose papers. Such transactions were not entered in the books of account. The loose papers were discovered during survey, which had entries regarding the sales amounting to Rs. 31,500/-, Rs. 3,000/- and Rs. 10,000/-, respectively, which were not recorded in the regular books of account. The books of account did not show any entry especially the cash books entries made for the period from 26.04.2002, till the date when survey was conducted i.e. 06.05.2002. The assessing officer, therefore, rightly invoked the provisions of Section 145(3) and rejected the books of account. This action of the assessing officer has been upheld on the factual satisfaction so recorded, not only by CIT (Appeals) but also by the ITAT. They have all concurrently held that during the course of survey discrepancy in cash and sugar stock and stock register were also detected. The assessee in the return of income has surrendered unexplained cash of Rs. 2,95,000/-, unexplained stock of sugar in the sum of Rs. 2,18,424/- and unexplained stock register of Rs. 77,200/-. Although, during the assessment proceedings the assessing officer retained the addition with regard to discrepancy in cash amounting to Rs. 2,95,600/- detected at the time of survey; however, he noted that the assessee had included only Rs. 2,18,424/- on account of discrepancy in stock of sugar and other goods in his return of income as against a discrepancy of Rs. 2,28,086/- found at the time of survey. During the course of survey, inventories were prepared in this regard and the stock as per physical verification was found of Rs. 14,23,250/- excluding the stock of sugar at Rs. 3,22,336/-. The stock as per the books of account,

excluding sugar, was to the tune of Rs. 13,26,323/- and as such the discrepancy that was found, was to the tune of Rs. 96,921/-. The assessee while filing the return of income included a sum of Rs. 87,259/- but failed to give any justification for non- inclusion of the differential amount of Rs. 9,662/-.

14. Similarly the assessing officer noted that the assessee had disclosed receipt of interest to the tune of Rs. 900/- only, whereas he had given advance of Rs. 2,50,000/- to its sister concern working in the name and style of M/s. Shubham Hotel on 08.05.2002 and yet had not charged any interest on such advance. The assessing officer also found from the account that the assessee had paid interest to the tune of Rs. 1,60,033/- during the relevant period. He accordingly worked out the interest on the said amount of Rs. 2,50,000/- given by the assessee without interest to its sister concern and held that the interest to that extent was incurred for non-business purpose; he therefore disallowed the interest at the rate of 12% on such amount at Rs. 26,833/-. His action was confirmed by the CIT (Appeals) and the ITAT. On this aspect of the matter, we find that the satisfaction recorded by the assessing officer and upheld by the CIT (Appeals) and ITAT is largely based on their findings on the questions of fact.

15. The judgment of Gujarat High Court in M. Kantilal Exports can hardly be said to have any application to the facts of the present case because in that case there was an apparent typing mistake in the figure of consumption of rough diamonds and actual figure tallied with records, which fact was also confirmed on affidavit by the typist, auditor and partner of the assessee firm. In those facts, it was held that no addition u/s 69C was called for. Not only this, in that case the statement of the auditor was also recorded who clearly admitted to have committed typing mistake and attributed the same to his typist. The CIT (Appeals) accepting that explanation deleted the additions made by the assessing officer u/s 69C but that was however turned down by the ITAT. It was in those facts that the High Court of Gujarat interfered with the matter.

16. Similarly the judgment of Chattisgarh High Court is also distinguishable and does not apply to the facts of the present case because what was held in that case was that the assessee was entitled to establish that confession made by him during survey proceedings was not conclusive and it was open to him to establish that the same was not true and correct, by filing cogent evidence. The CIT (Appeals) and ITAT accepted the explanation of the assessee for retracting from disclosure of undisclosed income made by the latter during the survey proceedings and deleted the additions made on account of excess cash and stock by accepting the updated books of account prepared by the assessee, which were supported by primary evidence on record. It was held that the concurrent findings of fact recorded by the CIT (Appeals) and the ITAT could not be said to be perverse.

17. In the present case, however, the situation is entirely converse wherein the appellant-assessee failed to give any satisfactory explanation on all the issues referred to above, and could not produce any cogent evidence in support of any

such explanation. Not only the assessing officer but also the CIT (Appeals) and ITAT in this case have concurrently recorded their findings against the appellant-assessee on all the issues. Those findings in the facts of the present case, in our considered view, cannot be said to be either perverse or erroneous so as to warrant interference by this Court.

18. Section 69 of the Act inter-alia provides that where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. According to this provision, therefore, addition can be made on this count by the assessing officer towards the income from the undisclosed source.

19. On the similar analogy the provisions contained in Sections 69A and 69B about the investment made by the assessee or he being found in possession of any valuable jewellery or any other valuable article which exceeds the amount recorded in this behalf in the books of account maintained by the assessee from any source of income and he fails to offer any satisfactory explanation, this amount may be deemed to be the income of the assessee for such financial year.

20. In the like manner Section 69C also provides that where for any financial year an assessee has incurred any expenditure and does not offer any explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not found satisfactory by the assessing officer, the amount incurred by assessee may be deemed to be the income of the assessee for such financial year.

21. Contention that the provisions of Sections 69, 69A, 69B and 69C of the Act, could not be invoked where the alleged unexplained cash and stock are duly accounted for and explained at the time of submitting the return of income, which is duly supported by books of account then produced, cannot be accepted for the simple reason because this will be dependent on the satisfaction of the assessing officer whether or not he finds the method of accounting adopted by the appellant-assessee to be in order and, on that basis, records his satisfaction with such finding under Sub-section (3) of Section 145 that he was satisfied about correctness or completeness of the account of the assessee accordingly notified under Sub-section (2) and held such account having been regularly followed and holds that the accounting standard as notified under Sub-section (2) thereof have been regularly followed by the assessee. It is in that background that the assessing officer is entitled to make computation of income or loss for the purpose of assessment in the manner on best judgment assessment basis as per Section 144 of the Act. It can not therefore be accepted that ingredients of Sections 69, 69A, 69B and 69C were not satisfied in the present case because in all these provisions what is provided is that if an

assessee is found to be the owner of any money, jewellery or any other valuable articles not recorded in the books of account and fails to offer any explanation about nature and source thereof or in case any such explanation, if offered, is not satisfactory in the opinion of the assessing officer, then this may be deemed to be the income of the assessee for such financial year.

22. Ultimately, therefore, it would be dependent on the nature of explanation submitted by the assessee and the satisfaction of the assessing officer about the acceptability of the same, which is the sine- qua-non for invoking the provisions contained in Section 69, 69A, 69B and 69C of the Act. It is in this context that the satisfaction of the assessing officer about the correctness and completeness of books of account maintained by the assessee as per provisions contained in Section 145 of the Act co-relates with the satisfaction of the assessing officer arrived at u/s 69, 69A, 69B and 69C of the Act.

23. We therefore do not find any infirmity in the impugned judgment passed by the ITAT so as to warrant interference by this Court in this appeal.

24. This appeal therefore fails and is hereby dismissed.