(2008) 01 RAJ CK 0105

In the Rajasthan High Court

Ravindra D. Trivedi APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 132

Citation : (2008) 215 CTR 313

Hon'ble Judges : N.P. Gupta, J;D.N. Thanvi, J

Bench : Division Bench

Judgement

1. This IT reference is made at the request of the assessee, vide communication dt. 11th May, 1999, seeking opinion of this Court on the following two questions:

1. Whether under the facts and circumstances of the case and in law, the Tribunal was justified in upholding the addition of Rs. 3,07,221 in respect of alleged unexplained investment in closing stock by ignoring the documents arid arguments to the effect that there was only negligible difference between the quantity of stock physically found and that as per the excise records ?

2. Whether on the facts and circumstances of the case and in law, the Tribunal was correct in upholding the addition of Rs. 3,07,221 merely on the basis of amount surrendered by the assessee at the time of search when no such addition was possible on the basis of seized documents and inventory taken by authorized officers ?

2. We have heard learned Counsel for the parties on these two questions.

A look at the question No. 2 shows, that this addition appears to have been made on the basis of the amount, surrendered by the assessee at the time of search, and the question comprehends the aspect as to whether such addition was possible on the basis of seized documents, and inventory taken by the authorized officers. In that view of the matter, the concentration is required on the question, as to whether the amount was surrendered at the time of search, and whether addition can be made on the basis of that surrender ?

3. Without saying much on the factual aspect, a bare look at para 7.1 of the order of the Tribunal, does show that at the time of search, the search team found the stock, available at the business premises, to be in excess of the one, mentioned in the books of accounts and the assessee, in reply to question No. 14 in his statement, made u/s 132(4) clearly admitted as under:

I agree for the difference of Rs. 3 lacs in stock and I am ready to disclose the same as my undisclosed income for the current year.

4. This statement was further corroborated by the statement of his son Manoj Bhai, who was working as a manager on salary. Admittedly, this surrender has not been retracted by the assessee, much less by successfully making out sufficient ground for discrepancy. Then, it has also been found by the learned Tribunal that the assessee had accepted the discrepancy, rather, as a matter of fact, made disclosure by way of a calculated attempt to sidetrack the attention of the search party and, therefore, sidetracked the investigation of the discrepancy and in the return or at the assessment stage, despite the above statement u/s 132(4), the assessee has not disclosed this income in the return. In our view, on the basis of language of Section 132(4), this addition could rightly be made and has rightly been made. Thus, the question No. 2 is answered against the assessee and in favour of the Revenue, obviously, with the result that the question No. 1 need not be gone into.

The reference is, accordingly, answered.

