

(2007) 02 DEL CK 0007
In the Delhi High Court
Case No : ITA No. 820 of 2006

Rella Ram Sant Ram

APPELLANT

Vs

Commisisoner of Income Tax

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Income Tax Act, 1961 — Section 132(1), 158BC, 260A

Citation : (2007) 211 CTR 213 : (2007) 138 DLT 214 : (2008) 301 ITR 392 :
(2007) 160 TAXMAN 355

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Satyen Sethi, for the Appellant; R.D. Jolly, for the Respondent

Judgement

V.B. Gupta, J.—Present appeal has been filed u/s 260A of the Income Tax Act, 1961 (in short "Act") against the order dated 23rd December, 2005 passed by the Income Tax Appellate Tribunal (in short "Tribunal").

2. Brief facts are that a search u/s 132(1) of the Act was conducted on 7th August, 1997 at the business premises of the assessed firm and also the residential premises of its partners. The assessed firm is engaged in the business of sale and purchase of timber/plywood. Consequent to the search, a notice u/s 158BC of the Act dated 28th April, 1992 was issued by the Assessing Officer requiring the assessed to file its return of income for the block period 1st April, 1987 to 7th August, 1997. In response thereto, the assessed filed its return showing undisclosed income of Rs. 4,74,119/-. During the course of assessment proceedings, it was noticed that for the above mentioned period the assessed had shown purchases of Rs. 11,77,666/- and sale of Rs. 20,45,039/-. The value of closing stock as on 7th August, 1997 was shown at Rs. 4,10,600/-. The Assessing Officer, however, noted that on the date of search, the search party had prepared an inventory of stock, which was valued at Rs. 7,41,797/-. The assessed was asked to explain the difference in the closing stock to which he replied that the valuation carried out by the search party has not been made

correctly since, the search party did not measure the stock physically with regard to each and every item of stock lying at the business premises of the assessed. Instead, a rough method of valuing the closing stock stacked in blocks was adopted. After the conclusion of the search on 7th August, 1997, the assessed had physically measured and inventoried each and every item of stock, which worked out to Rs. 4,10,576/- and the said amount was considered for the purpose of the filing of the return. The assessed also submitted that there were certain calculation errors made while making calculation in the inventory sheets compiled by the search party.

3. The Assessing Officer rejected the plea of the assessed that the inventory prepared by the search party was not correct, since the inventory was prepared by the Departmental Officer with the aid and assistance of the assessed's partner Sh.Samir Chawla and its perusal reveals that it contains description of each and every piece of wood available at the premises of the assessed. The Assessing Officer further observed that the assessed has not been maintaining any stock register for any of the financial years comprised with the block period and the closing stock was being worked out by the assessed only as a balancing figure. However, Assessing Officer found force in the plea of the assessed that certain errors had crept in the inventory prepared by the search party.

4. The assessed being aggrieved with the order of Assessing Officer filed an appeal before Commissioner Income Tax (A) who decided the matter in favor of the assessed. Thereafter, Revenue filed an appeal before the Tribunal and the Tribunal set aside the order of the Assessing Officer and restored the addition of Rs. 3,11,267/- made by the Assessing Officer. On the second ground the appeal filed by the Revenue was dismissed.

5. The present appeal has been filed challenging the decision of the Tribunal restoring the addition of Rs. 3,11,267/- made by the Assessing Officer.

6. It has been contended by the learned counsel for the Appellant that the Tribunal did not appreciate that the timber is measured in terms of length x breadth x width. From Annexure P-1, it is evident that the breadth and width was taken as "4 to 5 ft", whereas, in reality, breadth and width of any log/piece of timber can never be more than "12 to 15 inches". Further the Tribunal failed to appreciate that the Appellant on the basis of parallel books of account had filed trading and profit and loss accounts, wherein each and every purchase and sale was duly recorded.

7. The dispute in question pertains to adoption of closing stock as on 7th August, 1997. Since the search was conducted on this date, Therefore, the block period for the purpose of assessment ends on 7th August, 1997. During the course of search, inventory was prepared and according to it the stock was computed at Rs. 7,41,797/-. The assessed was not found to be maintaining any stock register and this fact has been admitted by Sh.Samir Chawla, partner of the assessed firm whose statement was recorded on the date of search. Sh.Samir Chawla in

his statement states that he has no idea as to how much stock in quantity and in value is lying in the premises. Further, in reply to question "How do you value the stock", he stated, "I do not have any idea." So the assessed was not maintaining any stock register at the time of the search and this aspect has been dealt with the Assessing Officer in his order. The relevant portion of the order of the Assessing Officer read as under:

It is an admitted position that the assessed has not been maintaining any stock register and that for any of the financial years and that the closing stock has been worked out only as a balancing figure by the assessed in this very reply dated 23rd August, 1999.

8. It was only in the return of income filed in response to notice u/s 158BC on 12th July, 1999, the assessed adopted the stock as on 7th August, 1997 at Rs. 4,10,600/-. The inventory in this case was prepared on 7th August, 1997 whereas, assessed waited to file its return of income on 12th July, 1999, wherein the stock was differently depicted. There is nothing on record to show as to what prevented the assessed from immediately filing the stock position after the search, if the inventory prepared on 7th August, 1997 was wrong. Therefore, this plea of the assessed that the stock and inventory prepared by the search party was wrong taken after more than two years, cannot be accepted and as such we have no reason to disagree with the findings given by the Tribunal.

9. With the regard to the submissions made by the learned counsel for the assessed that valuation done by the Department was not made correctly as actual physical measurements were not done at the time of the search, it may be pointed out that the inventory was prepared at the time of the search by the officials with the aid and assistance of Assessee partner Sh. Samir Chawla and in the inventory, description of each and every piece of teak and other pieces have been recorded in "feet and inches" and thereafter the quantity was written in "Cft" as and where applicable and after multiplying with the rate, correct valuation was arrived at. As already held above, the assessed has not been maintaining any register and the closing stock has been worked out by the assessed only as a balancing figure, so under these circumstances the inventory prepared by assessed after the date of search has no meaning.

10. Accordingly, we hold that there is no infirmity in the order passed by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Income Tax Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

11. Accordingly, the present appeal is, hereby, dismissed.