

(2006) 01 MP CK 0072

In the Madhya Pradesh High Court

Case No : ITA No. 107 of 2005 27 January 2006 A.Y. 1998-99

Sanjay

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A, 69

Citation : (2006) 203 CTR 275 : (2006) 154 TAXMAN 101

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Full Bench

Advocate : P.M. Choudhary, for the Assessee, for the Appellant;

Judgement

A.M. Sapre, J.

This is an appeal filed by the revenue (income tax department) (sic-assessee) u/s 260A of the Income Tax Act, against the order, dated 28-4-2005, passed by Tribunal in ITA No. 397/Ind/2001.

2. The question that arises for consideration in this appeal is, whether appeal involves any substantial question of law out of the impugned order of the Tribunal or in other words, whether two questions proposed by the appellant involve any substantial questions so as to admit the appeal. It is not in dispute that the pre-requisite of admitting any appeal u/s 260A of the Income Tax Act is to find out involvement of substantial question of law.

3. Heard Shri P.M. Choudhary, learned counsel for the appellant.

4. Having heard learned counsel for the appellant and having perused record of the case, we are of the view that appeal does not involve any substantial question of law as is required to be made out u/s 260A of the Act and hence, it merits dismissal in limine, resulting in upholding of the impugned order of the Tribunal.

5. The dispute relates to assessment year 1998-99. The assessee deals in

business of supply of machinery and spare parts like bearing, gear box, etc. Admittedly, the assessee did not maintain any stock register. The assessing officer in the course of assessment made an addition of Rs. 2,58,540 by invoking the provisions of section 69 of the Act. It was done keeping in view the difference in the quantification of closing stock as well as on account of applying the low GP rate. The assessing officer after affording an opportunity to the assessee came to a conclusion that explanation offered by assessee is not acceptable. Accordingly, an addition was made. It was upheld by Commissioner (Appeals) in an appeal filed by assessee and further upheld by the Tribunal in an appeal filed by the assessee by impugned order. This is what Tribunal held in para 5 of the impugned order :

"Para 5. After considering the arguments advanced by the parties in view of the material available on record and the orders of the authorities below, I do not find any substance in the submissions of the learned authorised representative as the assessing officer has specified the number of excess bearings which he could find on the basis of verification of records of the assessee relating to sales and purchase bills maintained by it. Since the assessee has failed to furnish any satisfactory explanation about the same, the assessing officer had no option but to apply the provisions laid down u/s 69 of the Act treating the investment as unexplained. The assessee has failed to improve its case even before the Tribunal and thus I do not find any reason to interfere with the first appellate order in the absence of any satisfactory explanation of the assessee. The addition is upheld. The ground is thus rejected."

It is against this order, the assessee is in appeal.

6. In our opinion, once the Commissioner (Appeals) and then lastly the Tribunal have taken the view in relation to particular addition/deletion and accordingly, made certain direction to assessing officer as mentioned supra then it does not involve any substantial issue of law as such. In other words, this court in its appellate jurisdiction which is defined u/s 260A *ibid*, cannot again *de novo* hold yet another inquiry with a view to find out whether explanation offered by assessee and which was gone into by two appellate authorities namely, Commissioner (Appeals) and Tribunal, is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding on such issue is entirely *de hors* the subject, or that it is based on no reasoning, or that it is absurd to the extent that no reasonable prudent man can ever reach to such conclusion, or that it is against any provision of law, and in particular Income Tax Act, a case for substantial question of law is made out.

7. Learned counsel for the appellant placing reliance on the decisions reported in Commissioner of Income Tax Vs. Shehnaz Hussain, and Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., made (an) attempt to contend that approach of all the three authorities is not correct. According to him, even though the view of the authorities is concurrent in nature but if it is not correct then this court should interfere because it constitutes a question of law. We do not agree. There

can be no quarrel to the law laid down in cases relied on by learned counsel for the appellant. What differs is its applicability to the facts of each case. What constitutes a question of law, has got to be seen with reference to facts of each case. As observed supra, the question involved is essentially a question of fact involving no interpretation of any section/rule and circular of the Act in question, nor it involves any question of public importance. When admittedly, the assessee failed to maintain the stock register in the course of his business then naturally all adverse consequences flowing from such non-maintenance must follow. In our view, it is obligatory for the assessee to maintain the stock register so that one is able to ascertain the actual position of stock lying with the assessee in which he is trading. In such circumstances, the assessing officer has every right to apply his best discretion on (the) facts of case and on the basis of material on record for determining the actual turnover and profit earned out of the said business.

8. In our view, no such error could be noticed by us in the impugned order. The Commissioner (Appeals) and Tribunal did go into the details of explanation offered by assessee, found no merit in it, thereby upholding the view of Commissioner (Appeals).

9. We thus, do not find any merit in the appeal. It fails and is dismissed in limine by holding that it does not involve any substantial question of law. No costs.