
(2010) 12 P&H CK 0643

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 14 of 2005 (Assessment Year 1995-96)

S.K. Traders

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2011) 237 CTR 46

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred u/s 260A of Income Tax Act, 1961 by the Assessee against order dated 11-6-2004 of the Tribunal, Chandigarh Bench, passed in ITA No. 281/Chd/1998 in respect of assessment year 1995-96.

2. The Assessee derives income from manufacture and sale of rice and its by-product. During search at the premises of M/s Partap Bhangu Solvex (P) Ltd., village Pasiona, a diary containing the details of rice bran purchased by that company from various persons including the Appellant was seized. In the said diary there were entries pertaining to purchases made from the Appellant and on being confronted, the Assessee vide letter dated 24-3-1995 admitted the correctness of said entries and surrendered a sum of Rs. 7.50 lacs as undisclosed income subject to no penalty and no prosecution. The basis of surrender by the Assessee was under-billing in the rates of by-products and sale of the by-products outside the books of account. Accordingly, the amount surrendered was taxed as undisclosed income. The addition was deleted by Commissioner (Appeals) but the Tribunal restored the same. It observed:

In the assessment year 1994-95, Assessee had disclosed a turnover of Rs. 1,47,74,768. The income from milling was disclosed at Rs. 22,882. The gross

profit disclosed was Rs. 7,61,169. The net profit disclosed was Rs. 2,066. In the year under appeal the Assessee disclosed the turnover at Rs. 1,77,90,955. The income from milling has been disclosed at Rs. 68,896. The gross profit has been disclosed at Rs. 12,29,629. This includes surrendered income of Rs. 7.50 lacs. Thus, the gross profit after excluding the surrendered income disclosed by the Assessee is Rs. 4,79,627. The net profit disclosed is Rs. 3,931. If we apply the yardstick of the income disclosed in the preceding year of Rs. 2,066, the income of Rs. 3,931 on the turnover of Rs. 17,90,955 is too low. Even if the said income is considered to be reasonable, one cannot overlook the income of Rs. 7,50,000 disclosed by the Assessee for the year under appeal on account of under-billing of by-products of rice and on account of sale of by-products of rice outside the books of accounts. So, the income of the Assessee, according to Assessee's own admission ought to be more than Rs. 7,50,000. As against this, the Assessee disclosed the income of Rs. 3,931 only which includes the amount surrendered of Rs. 7,50,000 which means the Assessee has disclosed the loss of more than Rs. 7,45,000. The surrender of Rs. 7.50 lacs of income subject to no penalty was made by the Assessee on 24-3-1995 i.e. just one week before the end of the previous year. Thus, there was no scope of suffering loss upto 24-3-1995. Most of the sales are before the said date. No evidence has been produced before the revenue authorities to support the claim of loss. On the other hand, the Assessee has itself offered to surrender income of Rs. 7,50,000. Even if there is no loss or profit on the sales as recorded in the books of account, the income of the Assessee ought to have been more than Rs. 7,50,000 as per its own admission before the Asstt. Director of IT (Inv.), Patiala. The mere fact that in some other cases the department has failed to take cognizance of the surrender made by them before the revenue authorities does not warrant deletion of addition in the case of the Assessee. The issue before us is as to whether the addition made by the assessing officer in this case is in accordance with law and justified on the facts and in the circumstances of this case. Taking the totality of the facts and circumstances of this case into consideration, we are of the firm view that the addition made by the assessing officer was justified. The manner, in which the addition has been calculated, in our view, is not important insofar as the addition made by the assessing officer was more or less the amount surrendered by the Assessee for taxation. It may be pertinent to mention that the Commissioner (Appeals) has proceeded on the wrong assumption that the amount of concealment is covered by the surrender of Rs. 7,50,000 made by the Assessee overlooking the fact that the Assessee had adjusted the surrendered amount in the books of account without offering any tax on the surrendered amount. We, therefore, set aside the order of the Commissioner (Appeals) and restore the addition as challenged by the revenue in the ground of appeal.

3. The appeal was admitted to consider following substantial question of law claimed by the Assessee:

Whether under the facts and circumstances of the case there being no evidence or material to prove the under-billing of the goods and assuming the sale having

been made at a higher price the conclusion so drawn is perverse and need to be quashed?

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Assessee submitted that surrendered income could not have been added to the income of the Assessee without taking into account the loss incurred as rightly held by the Commissioner (Appeals). The assessing officer has not found any defect in the books of account and in such a situation, book result could not be ignored. There being no evidence justifying addition, mere surrender could not be basis of the addition.

6. Learned Counsel for the Assessee further submitted that in another case in similar circumstances, being order dated 12-5-2004 passed in ITA No. 663/Chd/1998 Income Tax Officer v. G.R. Traders, the Tribunal upheld the deletion by the Commissioner (Appeals) with the following observations:

We have heard the rival submissions, perused the orders of the tax authorities and gone through the material available on record as well as the case law cited by the Assessee. In this case, we find that though there was a difference between the sale price of rice basmati sold and cost of production of rice basmati milled by the Assessee on its own but still assessing officer could not bring any material on record to suggest that the Assessee had resorted to underbilling while making sales made through commission agents of Delhi. The assessing officer had also not doubted the sales by commission agents, which were duly vouched. Therefore, the addition made by the assessing officer only on the presumption that the sale price of rice basmati was much lower than the cost of production, was not justified. Sales and purchases had not been doubted and the assessing officer was not justified in making the addition just because the fact that cost of production of rice basmati milled by the Assessee was higher than sale price of rice basmati shown by the Assessee. We have also gone through the case law relied upon by the CIT(A) reported in Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull, , wherein it was held that there should be a strong piece of evidence against the Assessee when the sales and purchases are vouched, no adverse inference should be deduced. The above judgment is directly applicable to the present case, wherein the sales of the Assessee are duly vouched , since made through commission agents at Delhi and the assessing officer has not doubted such sales made through the commission agents. We, therefore, considering the facts and circumstances of the case, are of the view that the Commissioner (Appeals) while deleting the impugned addition has passed a well-reasoned and speaking order which does not need any interference from our side. We uphold the same and reject the ground of the revenue.

7. We are unable to accept the submission. The Tribunal has clearly found that income disclosed by the Assessee was not correct and invoices issued by the Assessee were not genuine on "its own admission. The surrender being

voluntary, no further evidence was required and surrender itself could have been made the basis of addition. The said finding is not shown in any manner erroneous.

8. As regards deletion in another case, we are not required to go into correctness thereof. Even if in that case addition was set aside, we cannot accept the same as a precedent unless the impugned order is shown to be erroneous on merits. Moreover, in the above finding, the question whether surrender itself could be basis for addition has not been considered.

9. The question is, thus, answered against the Assessee.

10. Accordingly, the appeal is dismissed.