
(2008) 07 GUJ CK 0002
In the Gujarat High Court

Sukhadia Jamnadas Maganlal

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Income Tax Act, 1961 — Section 145, 145, 260A, 260A

Citation : (2008) 07 GUJ CK 0002

Hon'ble Judges : K.A. Puj, J; Bankim N. Mehta, J

Bench : Division Bench

Judgement

K.A. Puj, J.—The assessee has filed this tax appeal u/s 260A of the Income Tax Act, 1961 for the assessment year 1999-2000 proposing to formulate the following substantial questions of law:

(i) Whether on the facts and in circumstances of the case, the Tribunal was right in law in rejecting the production and sale and shortage/ wastage as per the books when in all the years in the past book results and yield and shortages as shown by the assessee were accepted ?

(ii) Whether the Tribunal was right in law in estimating the production, wastage and the sales on theoretical basis and on its own without either considering the past assessment of the assessee or any comparative case or the Tribunal decision of an earlier year on identical point ?

(iii) Whether on the facts and in the circumstances of the case because according to the Tribunal Section 145 applied estimating the turnover and the GP on the basis of past assessments was a right thing to do in law ?

2. This Court has issued the notice on 31-1-2008. The notice was issued to the respondent and Mr. M.R. Bhatt learned senior standing counsel has filed his appearance on behalf of the respondent.

3. Generally, in tax appeals, the court either admits the tax appeal and formulates substantial question of law or it dismisses tax appeal at the admission

stage itself. Notice is hardly issued where either the court intends to dispose of the matter at the admission stage or to hear the other side before formulating any substantial question of law.

4. The court in the present case is of the view that the Tribunals order on the face of it, seems to be erroneous or unreasonable, it is of no use to formulate now the question of law on perversity and to keep the matter pending for number of years in the High Court. Instead of that, the court decides to hear the parties at length at the admission stage and take appropriate decision. It is in this background of the matter that the appeal is heard at length and learned Counsel Mr. J.P. Shah as well as learned senior standing counsel Mr. M.R. Bhatt had made their submissions at great length and the court proceeded to dispose of the matter on the basis of the submissions made by the parties.

5. Brief facts giving rise to the present appeal are that the assessee has filed its return of income for the assessment year 1999-2000 disclosing total income of Rs. 1,20,787. The assessing officer, however, without finding out a single case of suppressed sale, computed on absolutely theoretical basis the production and sale of sweets worth Rs. 35,09,770 after allowing the shortage of 1 per cent and deducting therefrom the sales of Rs. 19,51,289 computed the suppressed sales of sweets of Rs. 15,58,481 and likewise computed the suppressed sales of farsan of Rs. 3,05,171 after deducting the shortage of 5 per cent.

6. Being aggrieved by the said order of the assessing officer, the assessee preferred an appeal before the Commissioner (Appeals), Baroda. The assessee pointed out before the Commissioner (Appeals), that its gross profit of 22.35 per cent compares favourably with 23.69 per cent of assessment year 1998-99 and 23.06 per cent of assessment year 1997-98. The addition made by the assessing officer would bring about the GP to 54.07 per cent. It was further pointed out that the complete details of raw materials purchased, consumption thereof and production of finished goods have been maintained. The assessee supplied to the assessing officer complete details of item-wise quantity of purchase of raw materials along with details of opening stock, issue for consumption, cleaning, crushing, handling, cutting, spoiling by workers, evaporation, calculations, etc. and quantity used for preparation of food for workers and employees and closing stock and yield thereof. The average sale price of sweet is Rs. 90 per kg. whereas the assessing officer has estimated at Rs. 110 per kg. The average sale price of farsan is Rs. 40 per kg. against Rs. 49 per kg. taken by the assessing officer. The learned Commissioner(Appeals) held that books are audited and no specific defect has been pointed out by the assessing officer. The assessing officer has not even invoked Section 145 of the Income Tax Act and in the past years GP deduced is about 25 per cent. The learned Commissioner (Appeals), therefore, directed the assessee (sic-assessing officer) to adopt the GP of 24 per cent on the sales as shown by the assessee.

7. Being aggrieved by the said order of the learned Commissioner (Appeals), the revenue took up the matter before the Tribunal. Before the Tribunal, the

assessee relied upon the Tribunals own decision for the assessment year 1975-76. The Tribunal did not give any importance to the acceptance of 25 per cent of GP by the Tribunal Itself in the assessment year 1975-76 and on its own without any evidence in support observed that books of accounts of the assessee were not correct and computed the fixed production of sweets and farsan and granted 10 per cent shortage each therefrom.

8. The inbuilt defect in the Tribunals order as pointed out by the learned Counsel is that the assessee had shown the sale of farsan of 22,243 kgs; the Tribunal because of theoretical basis computed it at 17,337 kgs. (in other words, lower than what the assessee had shown); whereas against the sweets sale of 22,356 kgs. shown by the assessee, the Tribunal computed 36,920 kgs. against the assessing officers 31,805 kgs. (in other words, higher than even the assessing officer). Such was the result of absolutely theoretical approach of the Tribunal, unconnected with the facts of the case.

9. Being aggrieved and dissatisfied with the order dated 1-12-2006, of the Tribunal, the assessee has preferred this tax appeal before this Court.

10. Learned Counsel Mr. J.P. Shah appearing for the assessee has submitted that the Tribunal has estimated the production and sale without citing any comparative case in support and quite contrary to the contemporaneous record maintained by the assessee and without referring to the past accepted assessments of the assessee including the Tribunal decision in assessee's own case. He has submitted that the Tribunal has adopted absolutely faulty theoretical approach to the matter, the result of which was that the Tribunal computed less production of farsan than what the assessee had shown and more production of sweets than what the officer has estimated. He has submitted that the Tribunal has not appreciated the fact that the assessee's business being old it ought to have considered the past assessments and the order of the Tribunal in assessee's own case in the past in regard to the trading results. He has further submitted that the Tribunal has proceeded on the footing that there are past assessments or a Tribunal's decision in the past on the self same point and not on a comparative case. The approach of the Tribunal is, therefore, absolutely wrong and it is invalid in law. Mr. J.P. Shah learned Counsel appearing for the assessee has further submitted that in the assessment years subsequent to the present assessment year, the department has more or less accepted GP shown by the assessee. In support of his submissions, he has produced necessary chart, assessment, returns etc. He has, therefore, submitted that the Tribunal's order being perverse and unreasonable, the finding given therein is required to be reversed and the appeal of the assessee is required to be allowed.

11. Mr. M.R. Bhatt, learned senior standing counsel for the revenue has submitted that the Tribunal's order clearly reveals the finding of fact and no question of law arises out of the order of the Tribunal. Hence the appeal of the assessee is required to be dismissed at the threshold. He has submitted that the Tribunal has specifically observed in its order that looking to the assessee's

business, non-maintenance of quantitative details and day-to-day stock, sales and purchases being not fully vouched, item-wise production and sales details not being available or filed, the assessing officer had two options : (i) to reject the books straightway and estimate the sales as well as GP for computing the assessee's income, and (ii) without rejecting the books of account straightway, could indirectly reject the books results by adopting the method of the determination of sales and GP on the basis of yield to be determined based on the consumption of raw material as shown in the assessee's books of account. The Tribunal has further observed that the assessing officer had opted for second option whereby the income of the assessee was determined on the basis of the yield accepted for manufacturing of such items in the commercial world and also to adopt the purchase and sales rates as prevailing in the market, keeping in view other factors, such as, turnover and place of business, etc. He, therefore, submitted that the method adopted by the Commissioner (Appeals) and confirmed by the Tribunal cannot be said to be unreasonable method and estimate made by the Tribunal cannot be said to be perverse or unreasonable and it does not give any rise to the substantial question of law.

12. We have considered the rival submissions and we have also gone through the orders of the authorities below.

13. It is true that normally in such matters, this Court in the orders passed by the authorities below. This is, however, one of the exceptional cases where the court cannot dismiss the appeal at the threshold without examining the facts and the inferences drawn therefrom by the Tribunal. It is an admitted fact that the assessee is an old assessee. It is regularly assessed by the department. In the assessee's own case the matter went upto Tribunal for assessment year 1995-96, wherein GP is adopted at 25 per cent. The Tribunal has brushed aside the said order for the assessment year 1975-76 only on the ground that complete facts for that year have not been furnished by the assessee and hence it is not justified to restrict to the point of GP rate. The Tribunal has also stated in its order that it is the case of the estimation of turnover and of GP rate, rather it is the case of determination of income on the basis of yield to be calculated on the basis of actual consumption. It is, however, to be noted that it is not only for the year 1975-76 which is pressed into service by the assessee but the assessee has furnished the detailed chart showing the figures of sales and GP as per the return of income filed by the assessee and as per the assessment years right from assessment years 1983-84 to 1999-2000. Bare reading of this chart unequivocally indicates that GP rate adopted by the assessee for all these years is ranging from 23 per cent to 25 per cent. Four assessments in the past have been finalised u/s 143(3) of the Income Tax Act, 1961, whereas other assessments have been finalised u/s 143(1) of the Income Tax Act, 1961. The assessee has produced details of subsequent years i.e., for the assessment years 2000-01 to 2002-03, wherein GP rates were adopted at the maximum rate of 24.5 per cent. The assessee firm was dissolved on 30-6-2001 and running business was taken over by Jamnadas Maganlal Sukhadia HUF and its case for

assessment year was finalised by the order dated 30-5-2005, adopting GP rate at 24.9 per cent. The assessee has also cited before the court comparative instances and the case of Sukhadia Jamndas Maganlal & Co.. was finalised u/s 143(3) of the Income Tax Act on 31-3-2003, accepting GP rate at 24.63 per cent. Assessment for assessment year 2001-02 was finalised u/s 143(3) of the Income Tax Act 1961 on 18-3-2004, accepting GP rate of 22.30 per cent. These assessments cannot be ignored or overlooked while adopting the yield. The Tribunal has taken the figures of opening stock and the period of such stock was adopted for one week and it was multiplied by 52 weeks. The figures so arrived at are so unreasonable that it resulted into higher stock than the stock adopted by the assessing officer. So far as the stock of sweets is concerned the Tribunal adopted sales more than the sales estimated by the assessing officer and the stock of farsan or namkin had resulted into lower than what the assessee had shown.

14. For the foregoing facts which have been appreciated in their true perspective, we are of the view that the Tribunal has not correctly decided the issue raised before it and it requires reconsideration. We, therefore, set aside the order of the Tribunal and remand the matter to the Tribunal for reconsideration of the whole issue in light of the observations made by us in the foregoing paragraphs after giving an opportunity of being heard to the parties.

15. In the above view of the matter, the question posed before us, we answer accordingly and the appeal of the assessee is allowed to the aforesaid extent without any order as to costs.