
(2005) 12 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 343 of 2005

Surinder Kumar Charanjit Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Income Tax Act, 1961 — Section 133A, 260A

Citation : (2006) 201 CTR 37 : (2006) 282 ITR 78

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.—This appeal u/s 260A of the IT Act, 1961 (for short, "the Act"), is directed against order dt. 2nd Feb., 2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for short, "the Tribunal") in ITA No. 71/Chd/2000, pertaining to the asst. yr. 1997-98.

2. According to the appellant-assessee (hereinafter described as "the assessee"), the order of the Tribunal involves the following substantial questions of law :

(i) That whether, under the facts and circumstances of the case, the Tribunal's finding that in case of surveys the method of assessment shall be estimation of profit as per past history and addition over and above the amount surrendered is justifiable and correct in law ?

(ii) That whether, under the facts and circumstances of the case, the Tribunal was justified in not taking into consideration the various reasons for deletion of addition given by the CIT(A) ignoring the facts that the appellant deals with different types of qualities, quantities, sizes and old and new types of Bardana which as per its own decision of earlier years and restoring the addition is perverse ?

(iii) That whether, under the facts and circumstances of the case, the Tribunal was justified in finding that the estimation is justifiable because the books of account have been rejected which is against the fact as there is no rejection of books of account or book results ?

(iv) That whether, under the facts and circumstances of the case, the Tribunal was justified in reversing the decision of the CIT(A) and restoring the addition of Rs. 2,94,632 as made by the assessing authority ?

3. At the outset, we may note that Mr. P.C. Jain, learned counsel for the assessee, did not press the appeal on proposed question Nos. (i) and (ii). Accordingly, this appeal is confined to proposed question Nos. (iii) and (iv).

4. Briefly stated, the background facts, insofar as these are relevant for the aforementioned two questions, are as follows :

The assessee is engaged in the business of buying and selling of hessian bags (jute bags) old and new, in different qualities and sizes. The assessee also manufactures these bags as per the market requirements.

On 7th Oct., 1996, a survey u/s 133A of the Act was conducted at the business premises of the assessee and it was found that there was a discrepancy of 73,352 bags in the closing stock. The value of the said stock was determined at Rs. 16,13,744. When confronted with the discrepancy, the assessee surrendered a sum of Rs. 10,50,000, subject to the condition that no penal action would be taken against it in respect of the relevant assessment year, i.e., asst. yr. 1997-98. It was stated that the said amount was over and above the normal book profits.

5. During the course of assessment proceedings, the AO found that GP rate declared by the assessee for the relevant assessment year was lower than earlier years. He also noticed that no stock register and manufacturing account had been maintained and even the valuation of the closing stock had been done at the lower rates. Consequently, ignoring the book results, he applied a GP rate of 1.49 per cent to the declared turnover, which resulted in an addition of Rs. 2,94,632. The AO also felt that the expenses claimed by the assessee were inflated. Accordingly, he made some disallowance out of the expenses claimed. The total income of the assessee was thus computed at Rs. 11,80,546, as against the returned income of Rs. 6,23,540. However, no separate addition was made on account of the aforementioned surrender of Rs. 10,50,000.

6. Aggrieved, the assessee preferred appeal to the CIT(A). The CIT(A) held that there was sufficient material to justify rejection of the books of account maintained by the assessee. He, however, was of the view that fall in the GP rate stood explained by the assessee with reference to the increase in turnover by 80 per cent, as compared to the immediately preceding assessment year. Consequently, he deleted the addition of Rs. 2,94,632. The addition made on account of disallowance of expenses was also reduced by the CIT(A).

7. Being aggrieved, the Revenue took the matter in further appeal to the Tribunal. By the impugned order, the Tribunal has restored the said addition on account of low GP rate. The Tribunal has come to the conclusion that best judgment assessment framed by the AO was based on relevant material and there was no infirmity in the said estimate. Hence, the present appeal.

8. Mr. P.C. Jain, learned counsel for the assessee has assailed the view taken by the Tribunal mainly on the ground that the book results of the assessee could not be rejected merely on the ground of low GP rate, particularly when the AO did not point out even a single defect in the books of account maintained by the assessee. It is asserted that in view of substantial increase in the total turnover for the year because of lower rates, the book results of the present accounting period were not comparable with the results of the previous years. It is argued that while restoring the addition made by the AO, the Tribunal has failed to take into consideration all these relevant factors and therefore, its order is perverse, giving rise to the aforementioned substantial questions of law. In support of the proposition that the book results of the previous year were irrelevant for the purpose of computing the profits of a subsequent year, reliance is placed on a decision of the Assam and Nagaland High Court in *STEELSWORTH LTD. Vs. COMMISSIONER OF Income Tax, ASSAM.*, .

9. We are unable to agree with the learned counsel. It is true that the accounts regularly maintained by an assessee in the course of business are normally taken as correct unless there are cogent reasons to indicate that they are not reliable yet it is not possible to lay down the exact circumstances in which these may be rejected as incorrect or unreliable. It is basically a question of fact to be decided on the facts and circumstances of each case. Similarly, a low GP rate may not per se lead to an inference that accounts are false, but coupled with other relevant circumstances, it does afford a sufficient ground for rejection of the accounts and estimation of profits.

10. In the instant case/the addition made by the AO has been restored by the Tribunal not merely on account of low GP rate, but because of the cumulative effect of non-maintenance of the stock register and manufacturing account and under-valuation of the closing stock. Coupled with it was the factum of surrender of income during the course of survey, for which no separate addition had been made by the AO while estimating the profits for the relevant year by enhancing the GP rate. The income so surrendered had been accounted for against the profits estimated. The Tribunal has recorded a clear and unambiguous finding that fall in the GP rate in the relevant assessment year has not been satisfactorily explained and therefore, the AO was justified in ignoring the book results as reflected in the books of account maintained by the assessee. The Tribunal has also held that the basis adopted by the AO, namely, the GP rate, declared by the assessee in the immediately preceding assessment year, for determining the profits for the current year is correct. We are of the opinion that the said findings are pure findings of fact and do not give rise to any question of

law, much less a substantial question of law.

11. Resultantly, we decline to entertain the appeal. Dismissed.