(2007) 01 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Surjit Motors — APPELLANT

Vs

ITO — RESPONDENT

Date of Decision : 15-01-2007

Acts Referred:
Income Tax Act, 1961 — Section 143, 260A, 263, 271

Citation : (2007) 165 TAXMAN 228

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The assessee has invoked the jurisdiction of this Court u/s 260A of the Income Tax Act, 1961 (for brevity, the Act) by challenging order dated 13-1-2006 (A-II), passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in ITA No. 369(Asr.)/2003, for assessment year 1996-97. The assessee has claimed that the following substantial questions of law would arise for our determination:

(i) Whether on the facts and circumstances of the case, the order of the learned ITAT is perverse to the extent that on the one hand addition is being made on account of unexplained investments in unaccounted purchases and on the other hand, claim of such purchases is not being allowed while calculating the total income ?

(ii) Whether on the facts and circumstances of the case, the learned ITAT is justified in upholding the addition of Rs. 3,56,231 in the total income of the assessee on the ground that there are unaccounted purchases when the gross profit rate has been applied, on the total sale and no sales have been found made, which are not entered in books of account ?

2. The assessee is a partnership firm doing its business of sale/purchase of motor parts at Pathankot. It had filed its return on 13-1-1998 in respect of the assessment year 1996-97 showing an income of Rs. 13,010. The aforementioned

income was in addition to salary and interest paid to partners, amounting to Rs. 75,766 + Rs. 35,381, which is assessable directly in the hands of the petitioner. Subsequently, proceedings of assessment u/s 143(2) of the Act were initiated and the assessing officer applied Gross Profit at the rate of 7.73 per cent as against the declared by the assessee at 6.8 per cent and accordingly, made an addition of Rs. 38,000 in the total income in the final assessment order was passed on 14-12-1998.

The Commissioner of Income Tax after initiating proceedings u/s 263 of the Act, set aside the order of the assessing officer and remanded the matter to him, vide order dated 27-3-2001 (A-5) expressing the view that certain addition was called for on account of some extra stock available with the assessee. No appeal was filed by the assessee against the order of remand. The assessing officer, vide order dated 28-3-2002 (A-9) passed the assessment order by adding an amount of Rs. 4,59,401.19 to the taxable income of the assessee being the investment made in unaccounted purchases out of undisclosed sources. Further, the assessing officer added a sum of Rs. 71,081 on account of application Gross Profit rate of 7.75 per cent and initiated proceedings u/s 271(1)(c) of the Act as no voucher in respect of expense claimed by the assessee were produced. The assessee had agreed to enhance its taxable income by Rs. 10,000 on that issue.

3. The order of the assessing officer was upheld by the Commissioner(Appeals), vide his order dated 19-5-2003 (A-10), except with the modification that an amount of Rs. 1,84,248 was deleted out of the addition made by the assessing officer on account of unaccounted purchases of Rs. 4,59,401. The Tribunal, upheld the additions in respect of unexplained and unaccounted purchases by citing the reason that the order dated 27-3-2001 (A-5), passed u/s 263 of the Act, was not challenged. The Tribunal also upheld the additions of Rs. 2,75,153 and Rs. 71,081 on account of working out the profit on unaccounted sales realised from unexplained investments made in the purchases. It was, therefore, held that there was no need to make separate addition on account of disallowance of expenditure and accordingly the addition of Rs. 10,000 was deleted.

4. After hearing learned Counsel, we are of the considered view that no question of law much less a substantial question of law would arise for determination of this Court because the finding of fact that purchases have been made outside the books of account and the sale would also be outside the books of account, has not been shown to be without any basis. The books of account have not been produced and negative stocks have been found by the assessing officer as upheld by the Commissioner (Appeals) and the Tribunal. These findings cannot be set aside in the appellate jurisdiction u/s 260A of the Act, as it is well-settled position in law. Therefore, we dismiss the appeal and uphold the order passed by the Tribunal.