
(1980) 02 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 28 of 1975 & Income-tax Reference No. 28 of 1975

Tara Singh and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Income Tax Act, 1961 — Section 144, 145, 145(1)

Citation : (1980) 4 TAXMAN 99

Hon'ble Judges : S.P. Goyal, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass, B.K. Gupta and S.K. Hirajee, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Dhillon, J.—The brief facts giving rise to this reference are that the assessee, a registered firm, had during the year of account undertaken four country liquor vends at Sareen, Dhandari, Gill and Dholewal. For the accounting year ending 31st March, 1971, relevant to the assessment year 1971-72, the assessee filed a return of income declaring an income of Rs. 76,559. The income tax Officer rejected the books of the assessee in all the four vends mainly because the rates of sales at which liquor was sold at all the four vends were not verifiable and correct. Accordingly, considering the sales at each of the four vends separately, the income tax Officer computed the total income at Rs. 1,36,966. The assessee filed an appeal to the A AC who granted total relief of Rs. 15,614 against the addition of Rs. 58,036.

2. The assessee filed an appeal before the income tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as "the Tribunal"). The Tribunal sustained an addition of Rs. 25,082 and allowed a relief of Rs. 17,339 to the assessee. While deciding the appeal, the Tribunal found as follows in para. 3 of its order dated the 11th September, 1974.

3. After hearing both the parties, we are of the view that the proviso to section 145(1) is attracted to this case because the sales in all the vends are not verifiable. The learned counsel for the assessee had produced before us excise registers but these registers only show quantities purchased and sold. These registers do not mention the sale price and as the sale price remains unproved the proviso to section 145(1) is, in our opinion, applicable. When we examine the accounts of the four vends separately, we find in Sareen vends the rate of G.P. shown is 19%. This rate, in our opinion, is reasonable and we are, therefore, not inclined to sustain any addition so far as this shop is concerned. The addition of Rs. 6,000 sustained by the Appellate Assistant Commissioner is deleted. In Dhandari Kalan vend the assessee disclosed a gross loss of Rs. 18,191 and the addition sustained is Rs. 7,500. In the preceding year, the assessee had shown loss of about Rs. 17,000 in Gill shop and in I.T.A. No. 1161/1971-72 dated 7th September, 1973, this loss was disallowed by us on the ground that the loss was not proved. Even after the original addition of Rs. 11,536, the income tax Officer had computed the loss at Rs. 11,199. In our opinion, the loss is not satisfactorily proved and we are, therefore, not inclined to interfere with the addition of Rs. 7,500. In Gill shop, the G.P. shown is only 7.4%. After making the addition of Rs. 6,000 the rate of G.P. works out to 3.7%. This rate is actually less than the rate shown by the assessee itself from Sareen shop and Dholewal shop. We are, therefore, not inclined to disturb the addition made in this account also. In Dholewal shop the rate of G.P. disclosed is 3.97%. Two additions have been made, one is of Rs. 11,921 on account of breakages. The assessee claimed breakages of 1,630 full, 459 half and 189 quarter bottles and as the breakages were not properly proved the income tax Officer allowed roughly half the breakage and made an addition for the balance half valued at Rs. 11,921. Half of the breakage comes to 815 full, 230 half and 94 quarter bottles and by taking the value at Rs. 10, Rs. 5 and Rs. 3, respectively, the breakage would be of the value of Rs. 9,582. We would sustain the addition of Rs. 9,582 only in this account. We are not inclined to sustain the other addition of Rs. 9,000 as this addition came to be made on the ground that the rate of sales made from 22nd March, 1971, to 31st March, 1971, were slightly less. In our opinion, there is no justification for making this addition because it is an admitted position that in the month of March, the liquor contractors generally reduce their rates. The reduction in rates takes place because the quantity of liquor already purchased has to be cleared off before the close of the accounting year. The addition of Rs. 9,000 is deleted. We thus sustain an addition of Rs. 25,082 and allow a relief of Rs. 17,339.

3. On an application being made by the assessee to the Tribunal, the Tribunal has referred the following questions of law to this court for its opinion:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income chargeable under the head "Profits and gains of business or profession" could not be deducted from the accounts of the assessee-firm because of the method of accounting employed by it?

2. Whether, on the facts and in the circumstances of the case, there was any evidence to sustain the addition of Rs. 25,082 to the trading account of the firm?

4. After hearing the learned counsel for the parties and going through the records of the case, we find that the proviso to section 145(1) of the income tax Act, 1961 (hereinafter referred to as "the Act"), cannot be made applicable in this case. The provisions of section 145 of the Act are as follows:

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee:

Provided that in any case where the accounts are correct and complete to the satisfaction of the income tax Officer but the method employed is such that, in the opinion of the income tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the income tax Officer may determine.

(2) Where the income tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the income tax Officer may make an assessment in the manner provided in section 144.

5. The bare reading of the provisions would suggest that the proviso will come into play only in a case where the accounts of the assessee are found to be correct and complete to the satisfaction of the income tax Officer, but the method employed in the accounts is such that, in the opinion of the income tax Officer, the income cannot properly be deduced therefrom. In the present case, the income tax Officer, the AAC and so also the Tribunal in fact did not accept the account books of the assessee as correct and complete. This inference is obvious as the price of sale of liquor mentioned in the account books of the assessee was not taken to have been correctly mentioned. It appears that the Tribunal fell into an error in applying the proviso to sub-section (1) of section 145 of the Act, presumably on the ground that the excise registers correctly showed the quantities of liquor purchased and sold. The said registers are only stock registers. The accounts produced by the assessee were not held to be reliable as regards the sale price of the liquor sold at all the vends, except that sold at Sareen vend. In view of all these findings, we fail to see how the present case could fall within the proviso to sub-section (1) of section 145 of the Act. The proviso will only come into play if the accounts of the assessee are found to be correct and complete and from those facts mentioned in the accounts, the income cannot be properly deduced. In the present case, the Tribunal did not believe the accounts of the assessee regarding the sale price of the liquor. In view of what has been stated above, we are of the opinion, that question No. 1 referred to us has to be answered in the negative, i.e., in favour of the assessee and against the revenue. We order accordingly. In view of our answer to question No. 1 we do not deem it proper to answer question No. 2, as in our view the

Tribunal, which was seized of the appeal filed by the assessee, looked at the material on the record keeping in view the provisions of the proviso to sub-section (1) of section 145 of the Act and since we find that the examination of the material from this viewpoint was not warranted, therefore, in the interests of justice, we consider it proper to refer the case back to the Tribunal with the direction that the Tribunal shall decide the appeal filed by the assessee in accordance with law. It is made clear that the Tribunal shall be seized of the appeal of the assessee as originally filed and it is up to the Tribunal to reach at a particular conclusion so as to decide the case in accordance with law. Nothing mentioned in this judgment will detract the Tribunal from deciding the appeal on merits in accordance with law. We order accordingly. However, there will be no order as to costs.