(2010) 12 P&H CK 0644

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 260 of 2004 (A.Y. 1995-96)

Victory Mills APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-12-2010

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

Citation : (2010) 12 P&H CK 0644

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred u/s 260A of IT Act, 1961 (hereinafter referred to as "the Act") proposing following substantial question of law arising out of order dt. 17-2-2004 of the income tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as "the Tribunal") passed in ITA No. 155/Chd/1999 in respect of asst. yr. 1995-96:

Whether under the facts and circumstances of the case, the Tribunal was justified in reversing the findings of the CIT(A) who had deleted the addition of Rs. 1,49,557 made by assessing authority which was based on no evidence or material to prove any excess price as alleged was charged by the Appellant for recorded sales and hence the findings of Tribunal are perverse?

2. As a result of search on the business premises of M/s Partap Bhangu Solvex (P) Ltd., village Pasiana, a diary showing unaccounted purchases from various concerns, including the Assessee was seized. On being confronted with the said material, the Assessee surrendered unaccounted income of Rs. 4 lacs. During the assessment the AO made additions to the declared income holding that the Assessee had under-billed transactions and its books of account were not reliable. The addition represented difference in declared sale price and the actual sale price.

3. The CIT(A) set aside the additions but the Tribunal restored the same. Dispute surviving in this appeal relates to addition of Rs. 1,49,557. In this regard, the Tribunal observed:

As regards allowing a relief of Rs. 1,49,557 on account of understatement of sale proceeds of rice bran, we find that the Assessee has been understanding the sale consideration. This fact is admitted by the learned CIT(A) himself. In fact, the details recorded in the seized diary indicated that the Assessee and its sister concern had sold rice bran @ Rs. 330 per quintal. The issue is about estimation of understatement of sale proceeds on the sale of rice bran. Similar issue came before us in the case of ITO v. Sachdeva Traders, Rajpura in ITA No. 32/ Chd/1999 for asst. yr. 1995-96 which was heard on 4-4-2003 and decided on 6-4-2003. We find that the same learned CIT(A) has upheld the addition by applying sale rate of Rs. 330 per quintal by referring to the cases of Sunil Traders, Rajpura, S.K. Traders and Shakti Traders. We have already upheld the order of learned CIT(A) in applying a rate of Rs. 330. Therefore, we do not find any justification of applying a lower rate than wheat as applied in the case of Sachdeva Traders (supra). Respectfully following our order dt. 6-4-2003 in the case of ITO v. Sachdeva Traders (supra) for asst; yr. 1995-96, we are of the opinion that the learned CIT(A) was not justified in allowing relief on this ground. We set aside the order of learned CIT(A) and restore that of the AO. This ground of appeal is allowed.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Assessee submitted that it could not be presumed that sale consideration in seized diary was correct one.

6. We are unable to accept the submission. A perusal of the above findings shows that the sale price of rice bran recorded in the books of account was not found to be genuine and actual sale price was found to be higher which rate was also adopted in another case mentioned therein. The issue is in the realm of appreciation of evidence. The entry and the books of account of the Assessee being not reliable, assessment had to be made on estimation. In absence of perversity, the finding recorded by the Tribunal has to be upheld.

7. In view of the aforesaid, question raised is answered against the Assessee. Accordingly, the appeal is dismissed.

