

(2015) 02 RAJ CK 0253
In the Rajasthan High Court
Case No : Income Tax Appeal No. 125 of 2004

Vijay Solvex Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Income Tax Act, 1961 — Section 142(2A), 143(2), 144, 145, 260A

Citation : (2015) 377 ITR 93

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Sanjay Jhanwar, for the Appellant; Parinitoo Jain, Advocates for the Respondent

Judgement

1. This Income Tax Appeal, under Section 260A of the Income Tax Act, 1961, was admitted on the questions of law as follows:

"(i) Whether the Income Tax Appellate Tribunal was justified in reversing the categorical finding of the first appellate authority that the books have not been rejected under section 145 of the Act in the present case and in absence of such rejection, the book result cannot be substituted?

(ii) Whether the term "Profit and Gains" used in section 80HH and 80I of the Income Tax Act, 1961 with reference to an eligible industrial undertaking have the same meaning as the term "income" whereas the statute uses both the terms independently in different provisions of the Act?"

2. On the question No. 1, it is submitted that the books of accounts of the assessee were not rejected, nor they were found to be inaccurate, incorrect or incomplete, and thus the Assessing Officer was not justified in adding Rs. 5 lacs, only on the ground that the profit rate shown by the assessee was much lower than the previous year. It is submitted that the appellate authority found, after it was held by Assessing Officer, that the regular books of accounts have been maintained, and purchase and sales are fully vouched, and quality details were

also maintained and produced before the Assessing Officer, and on such findings the books of accounts could not be disbelieved. The observation of the Assessing Officer that the appellant was trying to suppress his real profit, was not supported by any material, the appellate authority held that in the instant case, the books of accounts are properly maintained and unless the books are rejected, the estimation could not be made. He found that the Assessing Officer has nowhere found any defect in the books of accounts of the appellant, therefore, lump sum addition of Rs. 5 lacs cannot be sustained.

3. The Income Tax Appellate Tribunal allowed the second appeal with the findings that assessee-company derives income from crushing of oil seeds through oil mill, and solvent plant and also by trading of its products. The Assessing Officer observed that in view of the crushing of different kind of oil seeds and oil cakes proper comparison cannot be visualised in the business of the assessee company. The assessee company deals in purchase of various oil seeds, out of which certain oil seeds give more and better yield rate, whereas the lower quality of the oil seeds and oil cakes give lower yield rate, which cannot be compared with others. Tracing the history of the profits, the Assessing Officer found that despite continuous profits, the profit rate started decreasing from 19.84% in assessment year 1990-91 to 11.18% in assessment year 1993-94. In view of these factors, and specially the fact that the assessee had maintained the books of accounts properly, the books of accounts of the assessee were rightly not rejected by the Assessing Officer, but the addition of Rs. 5 lacs, on the unexplained reduction of profit rate was justified.

4. Learned counsel appearing for the appellant-assessee submits that the books of accounts were not rejected by the Assessing Officer. He had simply raised doubt over it, without any material or findings with regard to proper maintenance of books of accounts. He submits that no error was detected in the books of accounts, and they were accepted by the Assessing Officer, and thus, there could be no reason for addition of Rs. 5 lacs. The reduction in the profit rate in the absence of any defect in accounts, cannot be a ground to made addition in income. He has relied on judgment of this Court in Commissioner of Income Tax Vs. Maharaja Shree Umed Mills Ltd., (1991) 96 CTR 72 : (1991) 192 ITR 565 , in which it was held in para 3 as follows:

"3..... The assessee was asked to give reasons for the abrupt fall in the gross profit rate to which a reply was given that it was due to increase in expenditure on salaries and wages, fuel consumption and stores consumption. The assessee was directed to furnish the details of the percentage of consumption of the different items but, in spite of repeated reminders, he failed to furnish the same. It was held by the IAC that the assessee-company had failed to discharge the onus of proof regarding the fall in the gross profit rate to the extent of 6.4 per cent and the conclusion was that the expenses under various heads had been inflated. On appeal, the learned CIT took into consideration the change in the gross profit rate for 11 years and various other factors including the maintenance

of accounts, which have not been rejected and that the IAC had not pointed out any single instance of inflation in expenditure. The appeals of the assessee were allowed in part. In appeal, the Tribunal did not discuss the matter, but simply stated that the opinion of the CIT was correct and that the IAC had been unduly influenced by the action of his predecessor and had not applied his judicial mind in the proper perspective. The reasoning of the CIT was adopted."

5. Reliance has also been upon the judgment of Gauhati High Court in Aluminium Industries (P) Ltd. Vs. Commissioner of Income Tax, (1995) 2 GLR 216 , in which it was held in para 5 as follows:

"5..... Similarly, the mere fact that the profits were low is not a circumstance or material to justify addition of profits. It would be seen from both the orders Annexures-A and C as passed by the ITO and the Tribunal that the sheet anchor of this order is the fall in profit. Even in cases of best judgment it must be based on adequate and relevant material. It is now well-settled that the ITO while making a best judgment assessment should make an intelligible well grounded estimate and such estimate must be based on adequate and relevant material, inasmuch as, such estimate, is to be made in case of default committed by the assessee either in not making the return or not complying with all the terms of a notice under s. 143(2) of the Act or a direction made under s. 142(2A). It is on any one or more of this default that ITO has to make a best judgment assessment after taking into account all relevant materials which may be derived from the records or which may have come into his possession in course of assessment proceeding and which the assessee does not explain or contradict in respect of particulars given to him. The conditions enumerated in cls. (a), (b) and (c) under s. 144 of the Act relating to best judgment assessment must be fulfilled before taking recourse to the best judgment assessment. The order Annexure-A and C do not reflect such considerations although the Tribunal at one stage has observed: "In our opinion, the ITO was justified in making the addition of Rs. 50,000 which marginally increased the rate of gross profit of the assessee. There is no justification for deleting this amount of Rs. 50,000. Now going through the ITO's order, it would be evident that the essential requirement of s. 144 have not at all been complied with."

6. Learned counsel appearing for the appellant-assessee has also referred to the judgment of Delhi High Court in Commissioner of Income Tax v. Smt. Poonam Rani [(2010) 41 DTR (Del) 194], in which the Delhi High Court has held in para 9 as follows:

"9. The fall in GP ratio could be for various reasons such as increase in the cost of raw material, decrease in the market price of finished product, increase in the cost of processing by the assessee etc. There is no finding that the actual cost of the raw material purchased by the assessee was less than what was declared in the account books. There is no finding that the actual cost of processing carried out by the assessee was less than what had been declared in her account books. No particular expenditure shown in the account books has been disallowed by the

Assessing Officer. There is no finding by the Assessing Officer that the actual quantity of finished product produced by the assessee was more than what it was shown in the accounts books. There is no finding that the assessee had made any such sale of the finished product which was not reflected in the accounts books. There is no finding by the AO that the finished product was sold by the assessee at a price higher than what was declared in the accounts books. In these circumstances, the CIT(A) and the Tribunal, in our view, were justified in holding that the Assessing Officer could not have increased the GP profit ratio merely because it was low as compared to the GP ratio of the preceding year."

7. Learned counsel appearing for the respondent-department submits that the increasing turn over and gross profits from 1990-91 to 1993-94, did not justify the reduction in the profit rate. The assessee-company had declared profit rate of 11.18% as against the last years gross profit rate of 13.78%.

8. The Assessing Officer had given the figures of the gross profit rates of the assessee-company for last three years as follows:

9. The Assessing Officer, on analysis of the above table, recorded the trend of the assessee-company for adopting decreasing low profit rates. The reasons given for low profit rate, despite increase of the turnover and gross profits, was not accepted. The Assessing Officer, therefore, did not reject the books of accounts wholly, and even after accepting the method of accounting, made an addition of Rs. 5 lacs on the ground that the profit rate shown by the assessee was much lower than the previous year.

10. Learned counsel appearing for the respondent-department has relied on Commissioner of Income Tax Vs. British Paints India Ltd., AIR 1991 SC 1338 : (1991) 54 TAXMAN 499 , in which the Supreme Court has observed as follows:

"Section 145 of the Income-tax Act, 1961, confers sufficient power upon the officer-nay it imposes a duty upon him-to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where, accounts are prepared without disclosing the real cost of the stock-in-trade, albeit on sound expert advice in the interest of efficient administration of the company, it is the duty of the Income-tax Officer to determine the taxable income by making such computation as he thinks fit.

Any system of accounting which excludes, for the valuation of the stock-in-trade, all costs other than the cost of raw materials for the goods-in-process and finished products, is likely to result in a distorted picture of the true state of the business for the purpose of computing the chargeable income. Such a system may produce a comparatively lower valuation of the opening stock and the closing stock, thus showing a comparatively low difference between the two. In a period of rising turnover and rising prices, the system adopted by the assessee, as found by the Tribunal, is apt to diminish the assessment of the taxable profit of a year. The profit of one year is likely to be shifted to another year which is an incorrect method of computing profits and gains for the purpose of assessments

Each year being self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee has been found to be such that income cannot properly be deduced therefrom. It is therefore, not only the right but the duty of the Assessing Officer to act in exercise of his statutory power, as he has done in the instant case, for determining what, in his opinion, is the correct taxable income.

The Tribunal's order, affirming that of the Assessing Officer, was based on findings of fact made on cogent evidence and in accordance with correct principles. The High Court was clearly wrong in interfering with those findings.

Accordingly, we set aside the judgment of the High Court and allow the appeals of the Revenue with costs throughout.

Appeals allowed."

11. Section 145 of the Income Tax Act provides for method of accounting at the time of making assessment. The income chargeable under the head "Profits and gains of business or profess" or "Income from other sources" is provided to be computed in accordance with the method of accounting, subject to provisions of sub-section (2) in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (3) of Section 145 provides that where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provide in Section 144.

12. In our view, following an accepted method of accounting and the consistency in maintaining such accounts, does not ensure the correctness or completeness of the accounts. Even if, the method of accounting is correct, the accounts may be maintained in a manner, in which without creating any doubt over the method of maintaining of the accounts, the Assessing Officer, for good and sufficient reasons recorded by him, find that the computation is in such a manner, which does not accurately records the profits and gains. In the present case, the substantial increase in turnover from 4.58 to 33.63 crores, and the gross profits from Rs. 90 lacs to 3.76 crores, did not justify the gradual fall in the gross profit rates. The reasons, given by the assessee-company explaining the reduction of gross profit rates, were not accepted by the Assessing Officer, and thus he made lump sum addition of Rs. 5 lacs, which has been upheld by the Tribunal. We do not find any error of law in the computation of the income in a manner in the absence of a valid justification of reduction of gross profit rate, a marginal addition of Rs. 5 lacs was made.

13. The question No. 1 is thus, decided in favour of the department and against the assessee-company.

14. The question No. 2 is covered by the judgment of a Division Bench of this Court in *Vijay Solvex Ltd. v. Commissioner of Income Tax, Alwar* [D.B. Income Tax Appeal No. 185/2004, decided on 06.01.2014 alongwith two connected appeals], following the judgment of the Apex Court in *Motilal Pesticides (I.) Pvt. Ltd. Vs. Commissioner of Income Tax*, (2000) 160 CTR 389 : (2000) 243 ITR 26 : (2000) 9 SCC 63 , in which it was observed as follows:

"Both sections 80HH and 80M fall in Chapter VI-A relating to deductions to be made in computing total income. It will be seen that the language of sections 80HH and 80M is the same. It was held in *Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I*, AIR 1979 SC 1691 : (1979) 10 CTR 393 : (1979) 118 ITR 243 : (1979) 3 SCC 538 : (1979) 3 SCR 984 that deduction is to be allowed on the gross total income and not on the net income. But then the decision in *Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I*, AIR 1979 SC 1691 : (1979) 10 CTR 393 : (1979) 118 ITR 243 : (1979) 3 SCC 538 : (1979) 3 SCR 984 was overruled in *Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others*, AIR 1985 SC 1585 : (1985) 2 CompLJ 389 : (1985) 47 CTR 349 : (1985) 155 ITR 120 : (1985) 1 SCALE 1216 : (1986) 1 SCC 43 : (1985) 1 SCR 778 Supp : (1986) 1 UJ 86 . After the decision in *Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I*, AIR 1979 SC 1691 : (1979) 10 CTR 393 : (1979) 118 ITR 243 : (1979) 3 SCC 538 : (1979) 3 SCR 984 , two sections 80AA and 80AB were introduced by the Finance (No. 2) Act, 1980. While Section 80AA was to have retrospective effect with effect from April 1, 1968, Section 80AB was to have operation with effect from April 1, 1981. Section 80AA had the effect of effacing the decision of this court in *Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I*, AIR 1979 SC 1691 : (1979) 10 CTR 393 : (1979) 118 ITR 243 : (1979) 3 SCC 538 : (1979) 3 SCR 984 , which had interpreted Section 80M. Section 80AB was made applicable to all the sections in Chapter VI-A except Section 80M. In *Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others*, AIR 1985 SC 1585 : (1985) 2 CompLJ 389 : (1985) 47 CTR 349 : (1985) 155 ITR 120 : (1985) 1 SCALE 1216 : (1986) 1 SCC 43 : (1985) 1 SCR 778 Supp : (1986) 1 UJ 86 , however, this court specifically overturned its earlier decision in *Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I*, AIR 1979 SC 1691 : (1979) 10 CTR 393 : (1979) 118 ITR 243 : (1979) 3 SCC 538 : (1979) 3 SCR 984 and held that deduction is to be allowed only on the net income and not on the gross income. With reference to Section 80AB, this court said it was merely of a clarificatory nature and the decision of this court in *Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others*, AIR 1985 SC 1585 : (1985) 2 CompLJ 389 : (1985) 47 CTR 349 : (1985) 155 ITR 120 : (1985) 1 SCALE 1216 : (1986) 1 SCC 43 : (1985) 1 SCR 778 Supp : (1986) 1 UJ 86 is thus irrespective of Section 80AB of the Act. The High Court, therefore, relying on the decision of this court in *Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others*, AIR 1985 SC 1585 : (1985) 2 CompLJ 389 : (1985) 47 CTR 349 : (1985) 155 ITR 120 :

(1985) 1 SCALE 1216 : (1986) 1 SCC 43 : (1985) 1 SCR 778 Supp : (1986) 1 UJ 86 answered the question in favour of the Revenue and against the assessee."

The Division Bench also found that the Apex Court in *M/s. Himatsingka Seide Ltd. v. CIT* [Civil Appeal Nos. 1501/2008, decided on 19.09.2013] also took similar view.

15. Thus, the question No. 2, in the present case, in respect of the same assessee, has been decided by the Division Bench of this Court, with which we do not find any reason to disagree. The question No. 2 is also decided in favour of the department and against the assessee-company.

16. We are informed that the Apex Court in *M/s. Vijay Industries v. Commissioner of Income Tax* [Civil Appeal Nos. 1581-1582 of 2005, decided on 05.11.2014] has expressed doubt on the opinion expressed in *Motilal Pesticides (I) Pvt. Ltd. v. Commissioner of Income Tax* (supra), and has referred the question to Hon"ble the Chief Justice of India to constitute a Larger Bench to consider the correctness of the opinion.

17. Any doubt, expressed by Hon"ble Supreme Court on the correctness of the opinion in a case which has been followed in the case of the assessee for previous year, may not persuade us to take a different view in the matter, unless the Supreme Court decides otherwise.

18. Learned counsel appearing for the appellant-assessee prays for a liberty to file appeal in the Supreme Court. In our opinion, this case does not raise any question of law, which in our opinion, may be considered and decided by Hon"ble Supreme Court. The prayer is rejected.

19. The Income Tax Appeal is dismissed.