(2008) 09 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Vikas W.S.P. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:
Evidence Act, 1872 — Section 114
Income Tax Act, 1961 — Section 10B, 145, 260A, 40A

Citation : (2008) 307 ITR 304 : (2009) 177 TAXMAN 142

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The assessee has preferred this appeal u/s 260A of the Income Tax Act, 1961 (in short, "the Act") against the orders of the Income Tax Appellate Tribunal, New Delhi, "G" Bench in I. T. A. No. 7397 Del/2004 dated June 29, 2007, for the assessment year 1995-96, proposing to raise the following substantial questions of law:

1. Whether the Income Tax Appellate Tribunal was justified in concurring with the action of the Assessing Officer in disturbing the trading result without rejecting books of account u/s 145 and more so when the Income Tax Appellate Tribunal itself recorded in the last para of its order that proper books of account have been maintained ?

2. Whether the Income Tax Appellate Tribunal was justified in concurring with the action of the Assessing Officer in confirming the trading addition by notionally enhancing sale price without there being any evidence of more sale consideration passing to the assessee, more so in the absence of the provision on the lines of Section 40A(2), and more so when similar additions having been deleted have been accepted by the revenue and the Income Tax Appellate Tribunal having recorded in its order in the last para that proper books of account have been maintained ?

3. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts and in law in reversing a well versed, detailed and speaking order passed by the Commissioner of Income Tax (Appeals) without considering the explanations and materials on record, evidences, comparative cases, comparative bills and vouchers, stock registers, views of expert authors and comparative cases of various national and international companies involved in the same trade, merits of the case which is factually and also legally bad in law ?

4. Whether the Income Tax Appellate Tribunal was justified in reversing the order of the Commissioner of Income Tax (Appeals) without appreciating the findings on facts and evidences on record.

5. Whether the order passed by the Income Tax Appellate Tribunal is perverse and liable to be quashed

2. The assessee is engaged in manufacture of gaur gum pulverized by using guar seeds as raw material. Guar seeds are split into dal and in the process churi and chorma are obtained and sold in the market. The guar split dal is used as raw material for production of guar gum. The assessee filed return declaring nil income on the basis of profit derived from 100 per cent. EOU exempt u/s 10B of the Act. The Assessing Officer found that the assessee had transferred guar splits at the rate of Rs. 825 per quintal. The Assessing Officer asked the assessee to explain its claim showing sale of the said item at the rate of Rs. 431 per quintal as against normal rate which was higher.

3. The Assessing Officer accordingly made an addition on that account in the total income of the assessee. The Commissioner of Income Tax (Appeals) partly accepted the appeal of the assessee by applying the rate of Rs. 550 per quintal. The assessee as well as the Revenue preferred appeals before the Tribunal. The Tribunal dismissed the appeal of the assessee and partly allowed the appeal of the Revenue by observing that the Commissioner of Income Tax (Appeals) was not justified in making addition of Rs. 13,377 in respect of transfer of goods on September 30,1994 and December 30,1994, though the Commissioner of Income Tax (Appeals) was justified in deleting addition of Rs. 3,86,623 on account of transfer of raw splits from DTA to EOU at the rates lower than the market rates.

4. We have heard learned Counsel for the appellant and perused the record.

5. Only contention raised on behalf of the assessee is that the books of account of the assessee having not been rejected, the Assessing Officer could not make any addition. The addition could be made only by way of best judgment assessment and not otherwise.

6. We do not find any merit in this contention.

7. Scope of best judgment assessment by rejecting books of account is different from the scope of assessment by not accepting any particular entry. No doubt,

during the assessment, burden is on the Department to show taxability of income but for discharging that burden, it is not necessary that the Department leads evidence. On the principle of Section 114 of the Evidence Act, the Assessing Officer can presume existence of any fact which he thinks likely to have happened, regard being had to common course of natural events, human conduct and public and private business, in their relation to the facts of a particular case. If any such presumption is justifiably raised, the assessee may be required to rebut the same. Thus, the Assessing Officer can, from the material on record, reject a particular claim in the return unless the decision of the Assessing Officer can be held to be without any basis or erroneous. The finding recorded by the Assessing Officer to the extent the same has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal, unless shown to be perverse, will be a finding of fact

8. In the present case, the finding recorded by the Commissioner of Income Tax (Appeals), to the extent the same has been affirmed by the Income Tax Appellate Tribunal, has not been shown, in any manner, to be perverse.

9. Thus, no substantial question of law sought to be raised by the assessee arises for consideration.

10. The appeal is dismissed.

