Basir Ahmed Sisodiya Vs Income Tax Officer

Court: Supreme Court Of India

Date of Decision: April 24, 2020

Acts Referred: Income Tax Rules, 1962 â€" Rule 46A
Income Tax Act, 1961 â€" Section 68, 143(2), 143(3), 144, 145(2), 145(3), 260A, 271, 271(1)(c), 276(C)(D)(1)(2)

Citation: AIR 2020 SC 2137 : (2020) 5 JT 48 : (2020) 6 Scale 315

Hon'ble Judges: A.M. Khanwilkar, J; Dinesh Maheshwari, J

Bench: Division Bench

Advocate: P. V. Yogeswaran, Anil Katiyar

Final Decision: Allowed

Judgement

A.M. Khanwilkar, J.

1. This appeal takes exception to the final judgment and order dated 21.8.2008 passed by the High Court of Judicature for Rajasthan at Jodhpur (for

short, Ã¢â‚¬Å“the High CourtÃ¢â‚¬) in Income Tax Appeal No. 69 of 2006, whereby the appellantÃ¢â‚¬â„¢s appeal was dismissed and the order of Income Tax

Appellate Tribunal, Jodhpur Bench (for short, Ã¢â‚¬Ëœthe ITATÃ¢â‚¬â„¢) came to be upheld.

2. In short, the appellant/assessee was served with a notice under Section 143(2) of the Income Tax Act, 1961 (for short, Ã¢â‚¬Ëœ1961 ActÃ¢â‚¬â„¢) by the

Assessing Officer (for short, Ã¢â‚¬ËœOfficerÃ¢â‚¬â„¢) for the assessment year 1998Ã‚â€‹1999, pursuant to which an assessment order was passed on 30.11.2000.

This appeal involves limited challenge to certain addition made under the heads Ã‚, Ã¢â‚¬Å“Trading AccountÃ¢â‚¬ and Ã¢â‚¬Å“CreditsÃ¢â‚¬ in the assessment order.

The Officer, inter alia, while relying on the Balance Sheet and the books of account, took note of the credits amounting to Rs.2,26,000/Ã‚ (Rupees two

lakhs twentyÃ‚six thousand only). The Officer treated that amount as Ã¢â‚¬Å“Cash creditsÃ¢â‚¬ under Section 68 of the 1961 Act and added the same in

declared income of the assessee (for short, Ã¢â‚¬Ëœsecond additionÃ¢â‚¬â„¢). The Officer then proceeded to compute the income of the assessee for the

concerned assessment year. The relevant part of the computation is mentioned below: Ã‚â€‹

Ã¢â‚¬Å“Credits:

On examining the balanceÃ‚sheet and accounts books of assessee, it is apparent that the assessee has shown credit amount of Rs.2,26,000/Ã‚ in the

names of the following 15 persons:

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦

Accordingly, sufficient time and opportunity was granted to prove the veracity of credits of Rs. 2,26,000/Ã, as shown by assessee. However

false/wrong particulars or explanation were submitted with respect to credits shown by assessee. In this manner, the credits of Rs.2,26,000/Ã, shown

in the name of 15 persons, is not correct and any correct proof/evidence has not been produced by assessee with respect to income of creditors and

source of income. Besides this, the credits of Rs.2,26,000/Ã, as shown in the name of 15 persons is held as unexplained under Section 68 and added in

declared income of assessee.

Accordingly, the computation of income of assessee for assessment year 1998Ã‚â€‹99 is as follows:

Income shown in the Returns

Ã, 87500/Ã‚â€‹-

1. Disallowed deduction U/s.24(1) as per discussion Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 7200/Ã‚â€‹-

2. Additions in gross profit

Ã, 10000/Ã‚â€‹-

3. Additions on the basis of less Household expenses withdrawals 18000/Ã‚â€‹-

4. Unexplained credits as per discussions Ã, 226000/Ã‚-

261200/Ã‚â€‹ -

Total taxable Income Tax

Ã, Ã,

348700/Ã‚â€‹

Assessment was made. Necessary forms were issued. Notice be issued separately for imposition of penalty under Section 272(1)(c).Ã¢â‚¬â€‹

3. Aggrieved, the appellant/assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Jodhpur (for short, Ã¢â‚¬ËœCIT(A)Ã¢â‚¬â„¢).

The appeal was partly allowed vide order dated 9.1.2003. However, as regards the Trading Account and Credits in question, the CIT(A) upheld the

assessment order.

4. The appellant/assessee then preferred further appeal to the ITAT. Having noted the issues and objections raised by the Department and the

appellant/assessee, the ITAT partly allowed the appeal vide order dated 4.11.2004. However, the order relating to the second addition (under

consideration in the present civil appeal) regarding credits of Rs.2,26,000/Ã‚â€‹ (Rupees two lakhs twentyÃ‚â€‹six thousand only) came to be upheld.

5. The appellant/assessee then filed an appeal before the High Court under Section 260A of the 1961 Act. The appeal was admitted on 27.4.2006 on

the following substantial question of law: Ã‚â€‹

Ã¢â‚¬Ëœ Whether claim to purchase of goods by the assessee could be dealt with under Section 68 of the Income Tax as a cash credit, by placing

burden upon the assessee to explain that the purchase price does not represent his income from the disclosed sources?Ã¢â‚¬â„¢

The principal argument of the appellant/assessee was that once the books of account have been rejected and an assessment order has been passed,

the same books of account cannot be then relied upon by the Officer to impose consequent addition(s).

6. The High Court dismissed the appeal vide impugned judgment and order dated 21.8.2008, as being devoid of merits. The High Court opined that the

amount shown as credits was nothing but bogus entries and was justly added to the income of the appellant/assessee. The Court also noted other

reasons to dismiss the appeal. Relevant part of the judgment is reproduced hereunder: Ã‚â€‹

Ã¢â‚¬Å“In our view, none of the submissions advanced by the learned counsel for the appellant has force. Learned counsel has proceeded on the

basic assumption, about the factum of purchase of goods, having accepted by the authorities below, while the categoric finding of the Assessing

Officer, which has not been disturbed in appeal is, that regarding this purchase from unregistered dealer assessee was called upon during the course

of assessment proceedings to prove the correctness and genuineness of his claim, but he completely failed, and therefore, the purchase cannot be

accepted. In our view, this finding, rather is clear and categoric, that no purchase was affected by the assessee, and amount was shown in a bogus

manner, shown to be standing to credit of alleged purchasers, who could not be shown, to be either existent, or to be the creditors of the assessee,

much less for the consideration alleged by the assessee. It is clear from the assessment orders and the finding affirmed in the appeals, that opportunity

was given to the assessee to substantiate the genuineness of the alleged transactions, but the assessee failed, and efforts made by the Revenue, to

investigate the correctness of the alleged transaction also could not yield any results, in favour of the assessee.

Thus it is clear, that the amounts shown to be standing to the credit of the persons, which had been added to the income of the assessee, was clearly a

bogus entry, in the sense that it was only purportedly shown to be the amount standing to the credit of the fifteen persons, purportedly on account of

assessee having purchased goods no credit from them, while since no goods were purchased, the amount did represent income of the assessee from

undisclosed sources, which the assessee had only brought on record (books of accounts), by showing to be the amount belonging to the purported

sellers, and as the liability of the assessee.

That being the position, the contention about impermissibility of making addition under this head, in view of addition of Rs.10,000/Ã, having been made

in trading account, cannot be accepted, as books of accounts has been rejected for the purpose of assessing the gross profit, as the gross profit shown

in the books has not been accepted, on the ground, that the assessee had not maintained day to day stock registers, nor has produced or maintained

other necessary vouchers, but then, if those books of accounts did disclose certain other assets, which are wrongly shown to be liabilities, and for

acquisition of which the assessee did not show the source, it cannot be said that the Assessing Officer was not entitled to use the books of accounts

for this purpose.Ã¢â‚¬â€‹

(emphasis supplied)

7. The appellant/assessee in the present civil appeal has reiterated the argument that the Officer, having made the addition under Section 144 of the

1961 Act being Ã¢â‚¬Å“best judgment assessmentÃ¢â‚¬, had invoked powers under subÃ‚Section (3) of Section 145. For, assessment under Section 144 is

done only if the books are rejected. In that case, the same books cannot be relied upon to impose subsequent additions, as has been done in this case

under Section 68 of the 1961 Act. The appellant/assessee adopted a threeÃ‚pronged plea in support of the above contention; First, that assessment

order refers to Section 145(2) of the 1961 Act. It should have mentioned Section 145(3) of the 1961 Act. For that, the appellant/assessee relies on the

amendment of the 1961 Act which came into effect from 1.4.1997. It is urged that Section 145(2) prior to 1.4.1997 (preÃ, amendment) is akin to

Section 145(3) post 1.4.1997 (postÃ‚amendment). It is thus urged that the Department committed error in mentioning Section 145(2) and not Section

145(3); Second, that the assessment order in reference to the first addition has incorrectly mentioned the term Ã¢â‚¬Å“notÃ¢â‚¬. According to the

appellant/assessee, the prefix of the paragraph and the language used, makes it abundantly clear that the Department had relied upon Section 145(3)

of the 1961 Act to impose the addition. The appellant/assessee has also placed reliance on the Hindi version of the assessment order to buttress this

submission; Third, that the assessment was made under Section 144 as the same refers to Section 145(3). Under Section 144, the Officer has to make

Ã¢â‚¬Å“best judgment assessmentÃ¢â‚¬. The appellant/assessee urges that the purport of the stated provision is that the Officer reÃ‚assesses the entire

accounts and makes the assessment of total income and thereafter computes the income tax liability. Resultantly, the Officer (after rejecting the books

of account) cannot then rely on the same books of account to make any subsequent addition(s). The appellant/assessee also argues that the approach

adopted by the Officer would have the effect of taxing the same transaction twice.

8. To buttress the aforesaid contentions, reliance is placed on Maddi Sudarsanam Oil Mills Co. v. Commissioner of IncomeÃ‚Tax, Hyderabad and

Andhra [1959] 37 ITR 369 (AP); Commissioner of Income Tax v. Aggarwal Engg. Co. (Jal.) (2006) 206 CTR (P&H) 648 and Commissioner of

Income Tax vs. G.K. Contractors (2009) 19 DTR (Raj) 305 (IT Appeal No. 13/2009, decided on 28.1.2009).

9. Per contra, the respondent urged that the assumption of the appellant/assessee that the assessment order had rejected the books of accounts under

Section 145(3) of the 1961 Act is preposterous. In that, the assessment in question came to be made under Section 143(3) of the 1961 Act. Thus, the

Officer was justified in relying upon the said books for making addition(s). The respondent would also urge that while imposing the first addition, the

assessment order does not reject the books of accounts, but only that part which pertained to assessing the gross profit, as the assessee had not

maintained day to day stock registers, nor had produced or maintained other necessary vouchers while determining the gross profits. Additionally, the

respondent would also urge that the amount mentioned under Ã¢â‚¬Å“CreditsÃ¢â‚¬ in the Balance Sheet is incorrect and qualifies as Ã¢â‚¬Å“Cash CreditsÃ¢â‚¬

under Section 68 of the 1961 Act, as stated in the assessment order. Indisputably, the Officer gave several opportunities to the appellant/assessee to

prove the authenticity of the entries in question. As a matter of fact, summon notices were issued to the named fifteen creditors, but no

evidence/explanation was forthcoming. The finding of fact so recorded by the Officer is unexceptionable. The respondent thus contends that the

finding relating to the cash credits, does not give rise to any substantial question of law.

10. Before we proceed to analyze the rival submissions, we need to advert to I.A. No. 57442/2011 for permission to bring on record subsequent

events. By this application, the appellant/assessee has placed on record an order passed by the CIT(A) dated 13.1.2011, which considered the

challenge to the order passed by the IncomeÃ‚Tax Officer under Section 271(1)(c) dated 17.11.2006 qua the appellant/assessee for the selfÃ‚same

assessment year 1998Ã‚1999. The IncomeÃ‚Tax Officer had passed the said order as a consequence of the conclusion reached in the assessment

order which had by then become final upto the stage of ITAT vide order dated 27.4.2006 Ã‚ to the effect that the stated purchases by the

appellant/assessee from unregistered dealers were bogus entries effected by the appellant/assessee. Resultantly, the penalty proceedings under

Section 271 were initiated by the Officer. That order, however, has now been set aside by the appellate authority [CIT(A)] in the appeal preferred by

the appellant/assessee, vide order dated 13.1.2011 with a finding that the appellant/assessee had not made any concealment of income or furnished

inaccurate particulars of income for the concerned assessment year. As a consequence of the decision of the appellate authority, even criminal

proceedings initiated against the appellant/assessee have been dropped/terminated and the appellant/assessee stands acquitted of the charges under

Section 276(C)(D)(1)(2) of the 1961 Act vide judgment and order dated 6.6.2011 passed by the Court of Additional Chief City Magistrate (Economic

Offence), Jodhpur City in proceedings No. 262/2005. Reverting back to the decision of the appellate authority [CIT(A)], vide order dated 13.1.2011, it

considered the explanation offered by the appellant/assessee in the penalty proceedings concerning assessment year 1998Ã‚,1999 and went on to

observe thus: Ã‚â€‹

Ã¢â‚¬Å“17. During the course of appellate proceedings, the appellant filed an application under Rule 46A vide letter dated 16.10.2008 and the same was

sent to the ITO, WardÃ‚,1, Makrana vide this office letter dated 28.1.2009 and 1.12.2010 to submit remand report after examination of additional

evidences. Along with the application under Rules 46A, the appellant filed affidavits from 13 creditors, sales Tax Order for the Financial Year 97Ã‚,98

showing purchases from unregistered dealer to the tune of Rs.2,28,900/Ã‚,, cash vouchers duly signed on the revenue stamp for receipt of payment by

the unregistered dealers and copy of Rasan Card/Voter Identity Card to show identity of the unregistered dealer. The Assessing Officer recorded

statements of 12 unregistered dealers out of 13. In the report dated 22.12.2010, he mentioned that statements of above 12 persons were recorded on

15/16.12.2010 and in respect of identify, the unregistered filed photo copies of their Voter Identity Cards and all of them have admitted that they have

sold marble on credit basis to Sh. Bashir Ahmed Sisodia, the appellant, during the Financial Year 97Ã‚,98 and received payments after two or three

years. However, he observed that none of them have produced any evidence in support of their statement since all are petty unregistered dealers of

marble and doing small business and therefore, no books of account were maintained. Some of them have stated that they were maintaining small

dairies in the relevant period of time but they could not preserve old dairies. Some of them have stated that they have put their signature on the

vouchers on the date of transactions. It is therefore, observed that the Assessing Officer has neither doubted their identity nor any adverse comments

in respect of purchase of marble slabs in the Financial Year relevant at AY 98Ã‚â€‹99 has given in the remand report.

xxx xxx xxx

19. In respect of addition of Rs.2,26,000/Ã‚, it would be pertinent to note here that there is no denial of purchase of marble slabs worth Rs.4,78,900/Ã‚â€■

and sale of goods worth Rs.3,57,463/Ã‚ and disclose of closing stock of Rs.2,92,490/Ã‚ as disclosed in the trading account for the year ended on

31.3.98.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦.

Without purchases of marbles, there could not have been sale and disclosure of closing stock in the trading account and it suggests that the appellant

must have purchased marble slabs from unregistered dealers.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦.

The explanation given by the appellant in respect of purchases from the unregistered dealer and their genuineness are substantiated by filing of

affidavits, producing before the Assessing Officer in the course of remand report and the Assessing Officer did not find any objectionable in respect

identity of the unregistered dealers and claim made for sale of marble slabs to the appellant in the Financial Year relevant to AY 98Ã‚â€‹99.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦..

Thus, there was no justification not to accept the purchase made from unregistered dealers. If such an addition is made, it would give unreasonable

rate of profit. The vouchers in respect of purchases made from unregistered dealers were produced by the appellant.Ã¢â‚¬â€‹

(emphasis supplied)

Finally, in paragraph 20, the appellate authority observed thus: Ã‚â€‹

Ã¢â‚¬ËœÃ¢â‚¬Ëœ20. Under the above facts and circumstances, I am of the view that there was no either concealment of income or furnishing any inaccurate

particulars of income and accordingly, the penalty order dated 17.11.2006 passed by the Assessing Officer is cancelled. The grounds of appeal

allowed.Ã¢â‚¬â„¢Ã¢â‚¬â„¢

Notably, the appellant/assessee has asserted in paragraph 2 of the application (I.A. No. 57442/2011) that consequent to the order passed by the

appellate authority dated 13.1.2011, the Department has refunded penalty amount of Rs.98,153/Ã‚ (Rupees ninetyÃ‚eight thousand one hundred fiftyÃ‚â€■

three only) alongwith interest to the appellant/assessee. That means the Department has allowed the said order dated 13.1.2011 to become final.

11. We have heard learned senior counsel, Dr. Manish Singhvi and Mr. K. Radhakrishnan appearing for the appellant and respondent, respectively.

12. Before dissecting the rival submissions, we deem it apposite to reproduce the relevant provisions as applicable at the relevant time for assessment

year 1998Ã‚â€‹1999 as below;

Ã¢â‚¬Å“Assessment

143. (1) (a) Where a return has been made under section 139, or in response to a notice under subÃ‚â€‹section (1) of section 142,Ã‚â€‹

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount

paid otherwise by way of tax or interest, then, without prejudice to the provisions of subÃ‚section (2), an intimation shall be sent to the assessee

specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act

shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee:

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss

declared in the return, namely:Ã‚â€‹

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is

prima facie admissible but which is not claimed in the return, shall be allowed;

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return,

accounts or documents, is prima facie inadmissible, shall be disallowed:

Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or

interest is found due from him after making the said adjustments:

Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the

assessment year in which the income was first assessable.

(b) Where as a result of an order made under subÃ‚section (3) of this section or section 144 or section 147 or section 154 or section 155 or section 250

or section 254 or section 260 or section 262 or section 263 or section 264, or any order of settlement made under subÃ‚section (4) of section 245D

relating to any earlier assessment year and passed subsequent to the filing of the return referred to in clause (a), there is any variation in the carry

forward loss, deduction, allowance or relief claimed in the return, and as a result of which,Ã‚â€‹

(i) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to

be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly, and

(ii) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial

year in which any such order was passed.

(c) Where the assessee is a member of an association of persons or body of individuals and as a result of the adjustments made under the first proviso

to clause (a) of subÃ‚section (1) in the income or loss declared in the return made by the association or body, as the case may be, or as a result of an

order made under subÃ‚section (3) of this section or section 144 or section 147 or section 154 or section 155 or subÃ‚section (1) or subÃ‚section (2) or

subÃ‚section (3) or subÃ‚section (5) of section 185 or subÃ‚section (1) or subÃ‚ section (2) of section 186 or section 250 or section 254 or section 260

or section 262 or section 263 or section 264, or any order of settlement made under subÃ‚section (4) of section 245D, passed subsequent to the filing

of the return referred to in clause (a), there is any variation in his share in the income or loss of the association or body, as the case may be, or in the

manner of inclusion of his share in the returned income, then,Ã‚â€‹

(i) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to

be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly, and

(ii) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial

year in which any such adjustments were made or any such order was passed.

(1A) (a) Where as a result of the adjustments made under the first proviso to clause (a) of subÃ‚â€‹section (1),Ã‚â€‹

(i) the income declared by any person in the return is increased; or

(ii) the loss declared by such person in the return is reduced or is converted into income, the Assessing Officer shall,Ã‚â€‹

(A) in a case where the increase in income under subÃ‚clause (i) of this clause has increased the total income of such person, further increase the

amount of tax payable under subÃ‚section (1) by an additional incomeÃ‚tax calculated at the rate of twenty per cent on the difference between the tax

on the total income so increased and the tax that would have been chargeable had such total income been reduced by the amount of adjustments and

specify the additional incomeÃ‚â€‹ tax in the intimation to be sent under subÃ‚â€‹ clause (i) of clause (a) of subÃ‚â€‹section (1);

(B) in a case where the loss so declared is reduced under subÃ‚clause (ii) of this clause or the aforesaid adjustments have the effect of converting that

loss into income, calculate a sum (hereinafter referred to as additional incomeÃ‚tax) equal to twenty per cent of the tax that would have been

chargeable on the amount of the adjustments as if it had been the total income of such person and specify the additional incomeÃ‚tax so calculated in

the intimation to be sent under subÃ‚â€‹clause (i) of clause (a) of subÃ‚â€‹ section (1);

(C) where any refund is due under subÃ‚section (1), reduce the amount of such refund by an amount equivalent to the additional incomeÃ‚tax

calculated under subÃ‚â€‹clause (A) or subÃ‚â€‹clause (B), as the case may be.

(b) Where as a result of an order under subÃ‚section (3) of this section or section 154 or section 250 or section 254 or section 260 or section 262 or

section 263 or section 264, the amount on which additional incomeÃ‚tax is payable under clause (a) has been increased or reduced, as the case may

be, the additional incomeÃ‚â€‹tax shall be increased or reduced accordingly, and,Ã‚â€‹

(i) in a case where the additional incomeÃ‚â€‹tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 156;

(ii) in a case where the additional incomeÃ‚â€‹tax is reduced, the excess amount paid, if any, shall be refunded.

(1B) Where an assessee furnishes a revised return under subÃ‚section (5) of section 139 after the issue of an intimation, or the grant of refund, if any,

under subÃ‚â€‹section

(1) of this section, the provisions of subÃ‚â€‹sections (1) and (1A) of this section shall apply in relation to such revised return andÃ‚â€‹

(i) the intimation already sent for any incomeÃ‚tax, additional incomeÃ‚tax or interest shall be amended on the basis of the said revised return and

where any amount payable by way of incomeÃ‚tax, additional incomeÃ‚tax or interest specified in the said intimation has already been paid by the

assessee then, if any such amendment has the effect ofÃ‚â€‹

(a) enhancing the amount already paid, the intimation amended under this clause shall be sent to the assessee specifying the excess amount payable by

him and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly;

(b) reducing the amount already paid, the excess amount paid shall be refunded to the assessee;

(ii) the amount of the refund already granted shall be enhanced or reduced on the basis of the said revised return and where the amount of refund

already granted isÃ‚â€‹

(a) enhanced, only the excess amount of refund due to the assessee shall be paid to him;

(b) reduced, the excess amount so refunded shall be deemed to be the tax payable by the assessee and an intimation shall be sent to the assessee

specifying the amount so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this

Act shall apply accordingly:

Provided that an assessee, who has furnished a revised return under subÃ‚section (5) of section 139 after the service upon him of the intimation under

subÃ‚section (1) of this section, shall be liable to pay additional incomeÃ‚tax in relation to the adjustments made under the first proviso to clause (a) of

subÃ‚â€‹section (1) and specified in the said intimation, whether or not he has made the said adjustments in the revised return.

(2) Where a return has been made under section 139, or in response to a notice under subÃ‚ section (1) of section 142, the Assessing Officer shall, if

he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not

underÃ‚ paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to

produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this subÃ‚section shall be served on the assessee after the expiry of twelve months from the end of the month in which

the return is furnished.

(3) On the day specified in the notice issued under subÃ‚ section (2), or as soon afterwards as may be, after hearing such evidence as the assessee

may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material

which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and

determine the sum payable by him on the basis of such assessment.

(4) Where a regular assessment under subÃ‚â€‹ section (3) of this section or section 144 is made,Ã‚â€‹

(a) any tax or interest paid by the assessee under subÃ‚â€‹ section (1) shall be deemed to have been paid towards such regular assessment;

(b) if no refund is due on regular assessment or the amount refunded under subÃ‚ section (1) exceeds the amount refundable on regular assessment,

the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(5) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988),

shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and

references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and

applicable to the relevant assessment year.

Explanation.Ã, An intimation sent to the assessee under subÃ, section (1) or subÃ, section (1B) shall be deemed to be an order for the purposes of

sections 246 and 264.

Best judgment assessment.

144. (1) If any personÃ¢â,¬

(a) fails to make the return required under subÃ, section (1) of section 139 and has not made a return or a revised return under subÃ,section (4) or

subÃ,â€‹section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under subÃ,section (1) of section 142 or fails to comply with a direction issued under subÃ,â€■

section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under subÃ,â€‹ section (2) of section 143,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an

opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee

on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time

to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under subÃ,section (1) of section 142 has been issued

prior to the making of an assessment under this section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988),

shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and

references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and

applicable to the relevant assessment year.

Method of accounting.

145. (1) Income chargeable under the head ""Profits and gains of business or profession"" or ""Income from other sources"" shall, subject to the provisions

of subÃ,â€‹section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesses or in

respect of any class of income.

(3) 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 subÃ‚section (1) or accounting standards as notified under subÃ‚section (2), have not been regularly followed by the assessee,

the Assessing Officer may make an assessment in the manner provided in section 144.Ã¢â‚¬â€‹

(emphasis supplied)

13. Reverting to the findings and conclusions recorded by the Officer and which commended to the appellate authority, as well as, the High Court, it

must follow that the appellant/assessee despite being given sufficient opportunity, failed to prove the correctness and genuineness of his claim in

respect of purchases of marbles from unregistered dealers to the extent of Rs.2,26,000/Ã‚ (Rupees two lakhs twentyÃ‚six thousand only). Resultantly,

the said transactions were assumed as bogus entries (standing to the credit of named dealers who were nonÃ‚â€‹existent creditors of the assessee).

14. However, it has now come on record that the appellant/assessee in penalty proceedings offered explanation and caused to produce affidavits and

record statements of the concerned unregistered dealers and establish their credentials. That explanation has been accepted by the CIT(A) vide order

dated 13.1.2011. In paragraph 17 of the said decision reproduced hitherto, it has been noted that the Officer recorded statements of 12 unregistered

dealers out of 13 and their identity was also duly established. After analysing the evidence so produced by the appellant/assessee, the appellate

authority [(CIT(A)] noted that the Officer had neither doubted the identity of those dealers nor any adverse comments were offered in reference to

their version regarding sale of marble slabs by them to the appellant/assessee in the financial year relevant to assessment year 1998Ã‚1999 and receipt

of payments after two to three years. Further, there was no denial of purchase of marbles worth Rs.4,78,900/Ã‚ (Rupees four lakhs seventyÃ‚eight

thousand nine hundred only) by the assessee and sale thereof worth Rs.3,57,463/Ã‚ (Rupees three lakhs fiftyÃ‚seven thousand four hundred sixty three

only) with closing stock of Rs.2,92,490/Ã‚ (Rupees two lakhs ninety two thousand four hundred ninety only), as disclosed in the trading account for the

year ended on 31.3.1998. The appellate authority thus found that without purchases of marbles, there could be no sale and disclosure of closing stock

in the trading account. In other words, the materials on record would clearly suggest that the concerned unregistered dealers had sold marble slabs on

credit to the appellant/assessee, as claimed. As a consequence of this finding, the appellate authority concluded that there was neither any

concealment of income nor furnishing of inaccurate particulars of income by the assessee. We are conscious of the fact that these observations are

made by the competent forum (appellate authority) in penalty proceedings under Section 271 of the 1961 Act in favour of the assessee. However,

what needs to be noted is that the stated penalty proceedings were the outcome of the assessment order in question concerning assessment year

1998Ã, 1999. Indeed, at the time of assessment, the appellant/assessee had failed to produce any explanation or evidence in support of the entries

regarding purchases made from unregistered dealers. In the penalty proceedings, however, the appellant/assessee produced affidavits of 13

unregistered dealers out of whom 12 were examined by the Officer. The Officer recorded their statements and did not find any infirmity therein

including about their credentials. The dealers stood by the assertion made by the appellant/assessee about the purchases on credit from them; and

which explanation has been accepted by the appellate authority in paragraphs 17 and 19 of the order dated 13.1.2011.

15. To put it differently, the factual basis on which the Officer formed his opinion in the assessment order dated 30.11.2000 (for assessment year

1998Ã,1999), in regard to addition of Rs.2,26,000/Ã, (Rupees two lakhs twenty six thousand only), stands dispelled by the affidavits and statements of

the concerned unregistered dealers in penalty proceedings. That evidence fully supports the claim of the appellant/assessee. The appellate authority

vide order dated 13.1.2011, had not only accepted the explanation offered by the appellant/assessee but also recorded a clear finding of fact that there

was no concealment of income or furnishing of any inaccurate particulars of income by the appellant/assessee for the assessment year 1998Ã,1999.

That now being the indisputable position, it must necessarily follow that the addition of amount of Rs.2,26,000/Ã, (Rupees two lakhs twentyÃ,six

thousand only) cannot be justified, much less, maintained.

16. Accordingly, this appeal ought to succeed on this count alone and it would be unnecessary for us to dilate on other questions/contentions urged by

the parties as referred to in the earlier part of this judgment.

17. Accordingly, this appeal is allowed. The addition of Rs.2,26,000/Ã, (Rupees two lakhs twentyÃ,six thousand only) by the Officer under Section 68

of the 1961 Act, towards cash credit amount shown against the names of concerned unregistered dealers for the assessment year 1998Ã,1999, is

hereby set aside. The rest of the assessment order dated 30.11.2000 as modified by the CIT(A) vide order dated 9.1.2003, shall remain undisturbed.

There shall be no order as to costs. All pending interlocutory applications are also disposed of.