

(2006) 11 P&H CK 0100

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Brij Mohan Bansal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: Nov. 2, 2006**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 145, 256

Citation: (2007) 213 CTR 171 : (2009) 311 ITR 317**Hon'ble Judges:** Rajesh Bindal, J; Adarsh Kumar Goel, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal has been preferred by the assessee against the order dt. 30th Jan., 2004 of Tribunal, Chandigarh Bench-A, Chandigarh in ITA No. 813/Chd/2004 in respect of the asst. yr. 2000-01 proposing following substantial questions of law:

(i) Whether, on the facts and in the circumstances of the case, the learned Tribunal is justified in upholding the order of AO as well as the CIT, rejecting the books of accounts and applying Section 145(3) of the Act *ibid*, to determine the total income of the assessee?

(ii) Whether, the estimate of the profit despite the assessee maintaining regular accounts for business duly audited by chartered accountant was justified?

(iii) Whether, on the facts and in the circumstances of the case, the learned Tribunal is justified in upholding the order of CIT applying a GP rate of 5.5 per cent on the sales made to Government/semi-Government agencies, against the returned gross profit rate of 3 per cent and without referring any comparative case showing such GP rate of 5.5 per cent or any basis.

(iv) Whether, there is any material on record, on the basis of which the learned Tribunal has upheld the disallowance of Rs. 42,254 in expenses account?

2. Return of the assessee was processed u/s 143(1) of the IT Act, 1961 (for short, "the Act") and questionnaires were served on the assessee. Business of the assessee was purchase of timber and sale thereof in the form of batons* sleepers and crates, etc. The assessee was also supplying crates to the Government organizations. GP rate declared by the assessee was 3.83 per cent as against 8.59 per cent for the previous year. The AO rejected the books of account and made best judgment assessment by applying GP rate of 10 per cent on sales of Rs. 50,74,876 and GP rate of 6.5 per cent on sale of wooden crates worth Rs. 2,89,92,375 for the following reasons:

(i) In the previous assessment year, GP rate was 8.59 per cent and explanation that in the current year sales were made to the Government agencies did not justify lower GP rate.

(ii) No inventory of closing of stock was prepared and no stock register was kept; purchases were without bills; no payment slips were produced; wood was purchased in quintals while sale was made by measurement.

(iii) The sale of crates was of Rs. 2.89 crores as against sale of timber of Rs. 50.74 lacs.

(iv) Comparable sales were of GP rate on 13.15 per cent.

3. The AO disallowed telephone expenses to the extent of Rs. 5,000 for personal use in the business record; sum of Rs. 15,000 out of claim towards labour charges; Rs. 8,254 (25 per cent) out of car expenses and Rs. 4,000 out of claim for miscellaneous expenses since the assessee did not have the record.

4. On appeal, the CIT(A) partly accepted the claim of the assessee by reducing the GP rate from 10 per cent to 8.53 per cent for trading turnover and from 6.5 per cent to 5.5 per cent on sale of wooden crates apart from relief of Rs. 5,000 each in the matter of disallowance of labour charges and diesel expenses. The Tribunal upheld the order of CIT(A) on the grounds:

(i) Failure of the assessee to maintain record of purchases,

(ii) absence of verifiability of the sale,

(iii) absence of stock register,

(iv) low profit, and

(v) low GP rate.

5. Learned Counsel for the assessee submitted that the view taken by the Tribunal was erroneous and substantial questions of law arise from the order of the Tribunal which are required to be gone into by this Court.

6. Learned Counsel for the Revenue opposed the submissions particularly by pointing out that in the grounds of appeal raised before the Tribunal, rejection of books of account was not challenged; turnover of the assessee had increased compared to the last year; due opportunity had been given to the assessee; there are valid reasons for assessment.

7. After hearing learned Counsel for the parties, we are of the view that no substantial question of law arises on the findings recorded and the order of the Tribunal does not call for any interference. The view taken by the authorities below is a possible view on appreciation of material on record.

8. We may, however, refer to the judgments relied upon by the learned Counsel for the assessee which are as under:

(i) [St. Teresa's Oil Mills Vs. State of Kerala](#), .

(ii) [Jhandu Mal Tara Chand Rice Mills Vs. Commissioner of Income Tax](#), .

(iii) Jindal Aluminium Ltd. and Anr. v. Dy. CCT (1999) 115 STC 253 .

(iv) Mani & Co. v. CIT (1995) 123 CTR (Ker) 453 : (1995) 213 ITR 563 .

(v) [JOSEPH THOMAS and BROS. Vs. COMMISSIONER OF Income Tax KERALA](#), .

(vi) Tara Chand Hari Ram v. Sales-tax Tribunal, Haryana and Ors. (1972) 30 STC 343 .

(vii) [Commissioner of Income Tax, Bangalore Vs. K.Y. Pilliah and Sons](#), .

(viii) [POLISETTI SUBBARAIDU and CO. Vs. COMMISSIONER OF Income Tax, A.P.](#), .

9. In St. Teresa's Oil Mills (supra), it was observed that accounts maintained in the course of business have to be accepted as correct unless the same were unreliable or incomplete. In the present case, the accounts having been found to be incomplete or not maintained, this judgment is not applicable.

10. In Jhandu Mal Tara Chand Rice Mills (supra), it was held that method of accounting adopted by the assessee and accepted by the Department for the previous years; income computed on that basis could not be rejected. This proposition is not applicable to the facts of the present case.

11. In Jindal Aluminium (supra), it was held that where no defects were found in the stock registers and no transactions were found outside the books of account, inference of under-valuation of raw materials or of closing stocks was not warranted. This proposition is also not applicable to the facts of the present case.

12. In Mani & Co. (supra), it was observed that estimate of profits could not be upheld when the assessee was maintaining books of accounts and this gave rise to a question of law. The said judgment is also distinguishable as the same was out of proceedings u/s 256(2) of the Act and in the present case appeal is maintainable on a substantial question of law. Secondly, books of account were not rejected in that

case.

13. In Joseph Thomas (supra), it was held that GP rate disclosed by other cases could not be relied upon without furnishing the details to the assessee. The said judgment is also distinguishable as in the present case, GP rate has been estimated on overall view of the matter and after opportunity to the assessee.

14. In Tara Chand Hari Ram (supra), it was held that best judgment assessment could not be arbitrary. This judgment also has no application on the facts of the present case.

15. In K.Y. Pilliah (supra), it was held that where the assessee did not furnish explanation why profit at normal rate was not earned, the estimate gross profit was justified, The said judgment instead of supporting the case of the assessee, goes against him.

16. In Poliseti Subbaiaidu (supra), it was held that rejection of books of account was not justified in absence of data connecting comparable business with different methods of manufacture adopted by the assessee. The judgment is not applicable to the present situation.

17. In the present case, even after the assessment referring to comparable data confronted to the assessee, he did not bring on record any contrary data to substantiate his plea.

In view of above, the appeal is dismissed.