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Ramjiwan Lal Vs Commissioner of Income Tax

Income-tax Reference No. 318 of 1977

Court: Allahabad High Court

Date of Decision: Oct. 15, 1979

Acts Referred:
Income Tax Act, 1961 â€" Section 145

Citation: (1980) 123 ITR 319 : (1980) 3 TAXMAN 279

Hon'ble Judges: R.R. Rastogi, J; C.S.P. Singh, J

Bench: Division Bench

Advocate: K.B. Bhatnagar, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

C.S.P. Singh, J.
The Tribunal has referred the following two questions for opinion of this court:

1. Whether, after having given a finding that there was no defect in the account books maintained by the assessee, the Tribunal was legally justified

in rejecting the accounts and making an addition of Rs. 10,000 towards the trading results by its order dated November 12, 1974?

2. Whether, on the facts and circumstances of the case, the Tribunal was justified in upholding an addition of Rs. 10,000 ?

2. The assessment year in question is 1970-71. In that year, the assessee was engaged in the business of supplying firewood to different sugar

mills. His trading account showed a gross profit of Rs. 61,078, on sales of Rs. 12,66,191 giving a rate of 4.8 per cent. against 5 per cent. and 7

per cent. disclosed in the earlier assessment years. The ITO found various defects in the assessee"s account and rejected it. One of the reasons for

rejection of the accounts was that the assessee had claimed a shortage in the amount of fuel wood purchased by him which was in excess of the

shortage claimed by him in the earlier years and on being called upon to explain the excessive shortage, the assessee had failed to do so to the

satisfaction of the ITO. As a result an ad hoc addition of Rs. 75,000 was made to the returned income. An appeal was filed before the AAC. The

AAC held that the entire purchases were fully proved. Referring to the excessive shortage, which was one of the main reasons for the rejection of

the assessee"s accounts, the AAC took into account certificates regarding the weight of one chatta of firewood given by two divisional forest

officers, one of Meerut and the other of Ramnagar. Referring to these reports the AAC held that there was no standard weight of chattas of

firewood, and that the report given by the divisional forest officer, Ramnagar, was more authentic as compared to that given by the divisional forest

officer, Meerut. He also held that the assumption of the ITO that one chatta of firewood weighed 73 quintals was incorrect. He also declined to

rely on the case of Messrs. Agarwal Brothers, which was cited by the department, and which showed that one chatta of firewood weighed about

73 quintals on the ground that the gross profit disclosed by that assessee was much less than that shown by the present assessee. He, however,

compared the shortage in the stocks of firewood in the assessment year in question with that of the earlier years and as the shortage amounted to

11.3 per cent. as against 9"5 per cent. of the earlier assessment year, he held that there was an excessive shortage of 1.7 per cent. which,

considering the purchases made, amounted to 2,725 quintals. The average price of this was taken at Rs. 5 per quintal and an addition of Rs.

17,000 was made. The assessee appealed to the Tribunal. The findings recorded by the Tribunal have caused considerable difficulty in the disposal

of this case. The Tribunal has found as a fact that the defects in the account books pointed out by the ITO did not exist, and that the assessee had

maintained proper books of account and as such they could not be rejected. It also held that the rate of profit disclosed by the assessee had been

accepted for the earlier two years. After recording this finding they went on to observe that addition can be made for excessive shortage for which

the assessee could not give satisfactory explanation. Thereafter, they have given a finding which has caused concern in the case, as it has left the

matter jumbled. The subsequent finding recorded is that the assessee had purchased the firewood in bulk and supplied it to sugar mills after six

months, and further that during this period there were pilferages, thefts and driage. The goods were lying in different places unattended, with the

result that there was likelihood of the goods being stolen. The Tribunal has not estimated the extent of the loss due to pilferage, theft and driage, but

has made an ad hoc addition of Rs. 10,000 to the returned income. On the findings recorded by the Tribunal, we are unable to find the basis for

the said ad hoc addition. The order speaks in two voices. After the categorical finding that the accounts of the assessee are correct and complete

and that the shortage in the stocks can possibly be due to pilferage, theft and driage, there was no material left on the basis of which any addition

could be made on an ad hoc basis.

3. It must be remembered that addition to the returned income can be made only in case the accounts maintained by the assessee are not correct

and complete as contemplated by Section 145. The Tribunal having found that the accounts were correct and complete, it had no option but to

accept the returned income. Sri R.K. Gulati, appearing on behalf of the department, urged that the ITO has an option to make a computation of

income on such basis and in such manner as he may think fit even in cases where the accounts are correct and complete, if the method employed

by the assessee is such that the true income cannot be properly deduced. We see no substance in this argument. There is no finding by any of the

authorities that the method of accounting employed by the assessee is such that the income cannot be properly deduced therefrom. The ITO

rejected the accounts on the ground of various defects found by him and the fact that there was an excessive shortage and the gross profit shown

was less. The order of the ITO and the reasons given by him cannot be rewritten, so as to bring it in line with the first proviso to Section 145(1).

We are, accordingly, of the view that there was no justification for making the addition.

4. We, accordingly, answer the first question by saying that the Tribunal was not justified in making the addition of Rs, 10,000 towards the trading

result. The second question is answered in the negative. The assessee is entitled to his costs, which is assessed at Rs. 200. Counsel"s fee is

assessed at the same figure.