

(1994) 07 AHC CK 0029

Allahabad High Court

Case No: Income-tax Application No. 415 of 1992

Commissioner of
Income Tax

APPELLANT

Vs

Moradabad Syates
Ltd.

RESPONDENT

Date of Decision: July 20, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (1995) 211 ITR 459 : (1994) 77 TAXMAN 242

Hon'ble Judges: M.C. Agarwal, J; A.P. Misra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the Revenue and learned counsel for the assessee.

2. The Revenue seeks reference of the following questions of law to this court u/s 256(2) of the Income Tax Act, 1961, as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the action of the Commissioner of Income Tax (Appeals) in deleting the addition of Rs. 65,08,000 (assessment year 1981-82), Rs. 73,84,300 (assessment year 1982-83), Rs. 83,95,000 (assessment year 1983-84) and Rs. 6,76,250 (in the assessment year 1985-86) which were made u/s 69 of the Income Tax Act on account of profits on undisclosed hundi sales not recorded in the books of account ?

(2) Whether the Tribunal was legally justified in confirming the findings of the Commissioner of Income Tax (Appeals) that these were only accommodation hundis and there were no genuine sales, when, on the facts and in the circumstances of the case, the onus of proof that there were no genuine sales completely rested on the

assessee and this onus had not been discharged ?

(3) Whether there was material or evidence before the Tribunal to justify the confirmation of findings of the Commissioner of Income Tax (Appeals) that there were no genuine sales ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the Commissioner of Income Tax (Appeals") action in deleting the addition of Rs. 1,09,148 made for the assessment year 1985-86 on account of unpaid bonus, in spite of the fact that the statutory audit report in Form No. 3CD certified the fact that the assessee had been following the cash system of accounting for bonus ?"

3. The assessee is a company engaged in the business of manufacture and sale of year during the course of assessment proceedings for the assessment year 1984-85 and while scrutinising the ledger book of the Moradabad office of the company, the Assessing Officer found that substantial amounts had been debited on account of payment of interest and commission to the bank on a large number of hundis drawn on parties at Delhi where the head office of the company was situated. Enquiries with the Bareilly Corporation Bank, through which these hundis had been discounted, revealed that there were a large number of hundi sales effected by the assessee but these sales were not reflected in the books of account of the assessee. Details of these hundi sales were obtained from the bank as well as the sales tax office at Moradabad. When confronted with these details, the assessee pleaded that these were only accommodation hundis which were raised in order to get bank finance for its business and there were no actual sales or movement of goods involved. The Assessing Officer, however, rejected the above explanation of the assessee and made an addition of Rs. 15,72,080 as profits on undisclosed sales relating to the discounted hundis as per details given in the assessment order.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax who by means of order dated February 22, 1988, deleted the aforesaid additions holding that there were no undisclosed sales.

5. Being aggrieved against the order, the Revenue went up before the Tribunal who by means of order dated September 25, 1991, upheld the order of the first appellate authority deleting the additions made by the assessing authority. The main contention on behalf of the Revenue is that no finding has been recorded by the Tribunal independently but it has only upheld the finding of the first appellate authority. This contention raised on behalf of the Revenue is not correct. We find that the Tribunal has recorded its own findings. The relevant portion quoted below :

"Therefore, from the facts as detailed out and as are emerging from the record and as found by the Commissioner of Income Tax (Appeals) and as per records and materials placed on record, the entire practice of the assessee was towards raising of temporary finances by raising fake hundis which hundis were met on the due

date by the assessee itself. Therefore, there was no question of any profit on the sale of these hundis. The addition was rightly deleted by the Commissioner of Income Tax (Appeals) and we confirm the deletion as these are no materials brought on record to take a contrary view."

6. The further contention is that the first appellate authority merely recorded the argument of learned counsel for the assessee and had not applied its mind. This contention is also not correct. We find that the first appellate court after recording the arguments of learned counsel in paragraph 17 onwards has recorded its finding. Thus even this contention of the Revenue has no merit. Thus, we find that the finding recorded by the Commissioner of Income Tax as upheld by the Tribunal is a finding of fact and hence no question arises out of the Tribunal's order.

7. We, accordingly, reject the present application u/s 256(2) of the Income Tax Act.