(2012) 09 JH CK 0032

Jharkhand High Court

Case No: Tax Appeal No. 49 of 2010

The Commissioner of Income Tax, Ranchi		APPELLANT
	Vs	
M/s Sheo Prasad Poddar (HUF), Lohardaga		RESPONDENT

Date of Decision: Sept. 21, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 142(1), 143(2), 145, 194(c)

Hon'ble Judges: Prakash Tatia, C.J; Jaya Roy, J

Bench: Division Bench

Advocate: Deepak Roshan, S.C. I.T. and Rupa Kumari, for the Appellant; B. Poddar, M.K. Choudhary, Darshana Poddar, Piyush Poddar and Amrita Sinha, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the parties. The following question of law has been framed by the appellant:

(a) Whether the Hon''ble I.T.A.T. misdirected itself in law in accepting the book result by taking commission income at Rs. 6,83,669/- when the books of account of the assessee were found unverifiable by the Assessing Officer on examination of books particularly when the truck hiring expenses claimed of Rs. 7,08,85,676/- were not verifiable and receipts from Hindalco Limited and expenditure on account of truck hiring were not reflected in the P & L account of the assessee.

(b) Whether the Hon''ble ITAT misdirected itself in law in not addressing the ground of appeal taken by the Department before it that the expenditure claimed on hiring of truck/dumpers were not verifiable and ascertainable and, therefore, the Assessing Officer was correct in rejecting result shown by the assessee and then estimating his income at the rate of 5% of gross receipts.

(c) Whether the Hon''ble ITAT misdirected itself in law while coming to the conclusion that the only dispute in case was with respect to the percentage of deduction.

(d) Whether on the facts and circumstances of this case, the order of Hon''ble ITAT is perverse in as much as decision was arrived at in light of misappreciation of facts.

2. At the request of the learned counsel for the parties, heard for final disposal.

3. Learned counsel for the appellant has submitted that the Assessing Officer in the assessment order dated 27.12.2007, for the Assessment Year 2004-05 found that the assessee received gross receipt of Rs. 7,16,09,345/- from M/s. Hindalco Industries Limited for transportation of Bauxite under written contract and that was found proved from the T.D.S. Certificate from which T.D.S. of Rs. 36,800/- has been deducted u/s 194(c). The Assessing Officer found that from perusal of the P & L A/c, it appears that the assessee has not shown gross receipt of Rs. 7,15,69,345/- and the assessee has credited Rs. 6,83,669/- under the heading "commission of transportation in the P & L Account". For the purpose of making fresh assessment, notice u/s 143(2), u/s 142(1) and thereafter some letters were issued to the assessee. The assessee submitted written submission on 12.12.2007 and the assessee''s contention was that the assessee is a Commission Agent for transporting the goods and he got Rs. 3/- per metric ton as commission on total quantity''s transportation. The said amount is also a gross commission in the income and has been duly shown in the P & L Account.

4. The Assessing Office rejected the assessee''s contention on the basis of the written agreement entered into between the assessee and the M/s. Hindalco containing one stipulation that the M/s. Hindalco will pay the assessee Rs. 283/- per metric ton inclusive of loading and unloading charges. The assessee claimed certain expenditure obviously on account of payment to the truck owners as according to the assessee, he hired the trucks for transportation of the goods in question for which the contract was awarded to the assessee by the M/s. Hindalco. The said expenditure i.e. payment to the truck owners was found by the assessee not verifiable, and therefore, on this ground rejected the books of accounts and consequentially estimated the assessee''s net profit at the rate 5% of the gross receipt of Rs. 7,15,69,345/-.

5. The assessee preferred appeal against the said assessment order dated 27.12.2007 before the CIT (A), Ranchi. The CIT (A), Ranchi held that the Assessing Officer has rightly rejected the books of accounts u/s 145 but the Assessing Officer has committed mistake and observed that though the Assessing Officer has examined the details of the receipt, the details of the payments to the truck owners, the details of the T.D.S. Deducted and the payment to the Government account still has not accepted the commission as the income and estimated the income at the rate 5% of the gross receipt as income of the appellant, which has no basis at all.

Accordingly, the CIT (A) allowed the appeal vide order dated 11.11.2008.

6. Aggrieved against the said order of the CIT (A), the Revenue preferred the appeal being ITA No. 199(RAN)/2009. Whereas the assessee preferred the appeal being ITA No. 127(RAN)/2009 and also filed a Cross Objection being C.O. No. 82 (RAN)/2009. The Cross Appeals and the Cross Objection all have been dismissed by the learned I.T.A.T., Circuit Bench, Ranchi and upheld the finding given by the CIT (A).

7. The learned counsel for the appellant relied upon the agreement dated 3.4.2003 executed between the parties for transportation of bauxite. The copy of this agreement has also been placed on record by the assessee along with the counter affidavit. However, the assessee also has placed on record one earlier agreement, which is dated 30.3.2002. In the agreement dated 30.3.2002, there is specific condition no. 15 providing that the contractor (assessee) will receive charges'' at the rate of Rs. 3/- per metric ton on the quantity''s transported by the individual truck owner. However, this agreement was operative upto 31.3.2003 only, therefore, this agreement is not relevant. The assessee now placed on record one of the letter given by the New Chotanagpur Truck Owners Association dated 1.4.2003 conveying that it has been decided by the Association to withdraw the strike going on from 1.4.2003 and it has been conveyed by this letter that as per the talk with the company, the contractor shall be entitled to Rs. 3/- per metric ton and the rest of the amount will be paid to the truck owner. One email communication by the company conveying the decision of the meeting dated 18.3.2008 also has been placed on record at page no. 13 of the counter affidavit, but this is also not relevant for our purpose.

8. In sum and substance, the contention of the learned counsel for the appellant Mr. Deepak Roshan is that the CIT (A) committed grave error of law by misreading the agreement dated 3.4.2003, and wrongly held that the petitioner is a Commission Agent and got Rs. 3/- per metric ton as commission on total goods transported. The said finding is based on no evidence. Therefore, on this count, the order passed by the CIT (A) and confirmed by the I.T.A.T. deserves to be set aside. It is also submitted that the I.T.A.T. was under the wrong impression that there was only dispute regarding the allowances of 10% towards the miscellaneous expenses for transportation and held that the assessee entitled to 20% of the expenses for the work done by him for earning the above commission. We have considered the submissions of the learned counsel for the parties and we are of the considered opinion that the C.I.T. (A) as well as the I.T.A.T. both have ignored the written agreement between the assessee and the Hindalco Industries Limited which was entered into between the parties for transportation of the Bauxite containing an stipulation that the company will give Rs. 283/- per metric ton to the assessee for transportation of the Bauxite inclusive of loading and unloading charges and the C.I.T. (A) as well as the I.T.A.T. have recorded a finding contrary to the written agreement that the assessee has deducted an amount of Rs. 3/- per metric ton and

paid the rest of the amount to the transporters or the persons from whom the trucks were obtained by the assessee. There is no mention of the letter dated 1.4.2004 conveying some decision of the awarded company that is New Chhotanagpur Truck Owners Association, wherein there is a stipulation of giving commission of Rs. 3/- per metric ton to the assessee. If there is any such letter dated 1.4.2004 of the Truck Owners Association, then whether that was the basis for finding of the C.I.T. (A) and the I.T.A.T. then, that is also not apparent from the orders passed by the C.I.T. (A) and the I.T.A.T. A copy of the letter dated 1.4.2004 has been placed on record by the respondent and whether that letter is on record of the authorities below is also not clear. In that fact and situation, the finding of the C.I.T. (A) as well as the I.T.A.T. holding that the assessee has charged Rs. 3/- per metric ton as commission on the transported goods is contrary to the written agreement which has not been rejected by the C.I.T. (A) or the I.T.A.T. Therefore, the orders passed by the C.I.T. (A) dated 11.11.2008 and the I.T.A.T. dated 29.4.2010 are liable to be set aside. Since there is one letter dated 1.4.2004 placed on record by the respondent-assessee and its evidentiary value has not been judged and cannot be judged by us in Appeal, therefore, the matter is remanded to the Assessing Officer for making fresh assessment order after considering the available materials.