
(2004) 04 MP CK 0033

Madhya Pradesh High Court (Indore Bench)

Case No: Income-tax Reference No. 62 of 1996

Ladha Traders

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: April 30, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 145

Citation: (2004) 191 CTR 48 : (2004) 269 ITR 183 : (2004) 140 TAXMAN 104

Hon'ble Judges: Ashok Kumar Tiwari, J; A.M. Sapre, J

Bench: Division Bench

Advocate: G.M. Chafekar and D.S. Kale, for the Appellant; R.L. Jain and S. Gupta, for the Respondent

Judgement

A.M. Sapre, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee to answer the following question of law :

"Whether, on the facts and circumstances of the case, there is any legal material for the conclusion of the Tribunal that there is concealment of sale to the extent of Rs. 1,40,340 ?"

2. The issue arises for the assessment year 1980-81. The assessee is a dealer in kerosene oil as also other petroleum products such as furnace oil, light diesel oil, etc. In the course of the assessment proceedings, the Income Tax Officer noticed several defects in the books of account. It was noticed that account books had also been seized by the sales tax authorities. It was further noticed that there were several kinds of discrepancies between the sales as recorded in the cash book and sales reflected in the cash vouchers. In the opinion of the Income Tax Officer, sales to the tune of Rs. 1,40,340 were found under-recorded in the cash book when they were compared with the sale vouchers maintained by the assessee. In other words, in the opinion of the Income Tax Officer the sales amounting to Rs. 1,40,340 were in

the nature of suppressed sales from the books of account and did not reflect the true account of the assessee. The Assessing Officer accordingly added this amount to the income of the assessee. It is against this addition, the assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals). The appeal was dismissed. The assessee then filed second appeal to the Tribunal. However, even the second appeal was also dismissed resulting in upholding of the addition made by the Assessing Officer in the total income of the assessee. It is against this addition, the assessee prayed for making a reference to this court which was declined. However, this court then called for the reference and this is how the same has been sent to this court by the Tribunal.

3. Heard Shri G.M. Chafekar, learned senior counsel, with Shri D.S. Kale, learned counsel for the applicant and Shri R.L. Jain, learned senior counsel, with Shri S. Gupta, learned counsel for the non-applicant.

4. Having heard learned counsel for the parties and having perused the statement of case, we are of the opinion that the question referred to this court has to be answered against the assessee and in favour of the Revenue. In other words, our answer to the question is that the Tribunal was right in holding that there is a concealment of sale to the extent of Rs. 1,40,340.

5. In our opinion, it is useful to quote verbatim, the explanation of the assessee on this issue which they gave before the Assessing Officer as to how and on what basis the alleged short fall in the accounts to the extent of Rs. 1,40,340 has occurred. Indeed, this explanation of the assessee was not accepted by the Assessing Officer, and the same was upheld by the Commissioner of Income Tax (Appeals) and later by the Tribunal in the following words :

"These instances reflected suppression of sales to the tune of Rs. 1,40,340 on account of understatement.

9. The assessee submitted that sometimes the cash is not recovered in respect of the sales in the vouchers. Whenever it is recovered, it is recorded in the cash-book. Sometimes sales as per sale vouchers are less but recovery is more on account of earlier sales. In other words if certain sales are recorded short, at a subsequent date it is recorded in excess. It is further contended that in terms of quantity, purchases and sales are verifiable from the records of the Indian Oil Corporation. The excess sales compensate the short sales. The assessee did not prepare any reconciliation to explain this stand. It is also not normal practice that sales are reflected in books though the amounts have not been recovered, that too on account of cash sales. If the assessee's contention is correct then the sales shown as on cash basis as per voucher but cash not recovered should have been shown in the journal by passing appropriate entries for correct sales. No such entry has been passed. It is not possible to locate as to from whom money was to be recovered on account of such sales. Otherwise also the short sales should be compensated by excess sales shown

subsequently. It is also not the case. Hence, addition of Rs. 1,40,340 is made on account of suppressed sales."

6. In our opinion, the system of accountancy followed by the assessee was admittedly faulty. In other words, it was not as per the norms applicable for maintaining the cash book. Even according to the assessee the sale made pursuant to sale voucher was not reflected on day-to-day basis in the cash book. In the system of accountancy, in the cash book, the debit and credit entry must always co-relate with each other to work out the balance for being carried forward to the next day. The cash book must reflect the true picture of each and every sale transaction on day-to-day basis and the moment it is affected. When even according to the assessee, the sale had taken place and voucher is issued then it should have appeared in the cash book in the same manner. In our opinion, the explanation offered by the assessee as to why the entry could not be made the same day was not rightly accepted by the taxing authorities, being not according to normal principle of accountancy.

7. In our opinion, the sanctity of the books of account is of paramount importance. The books of account must always reflect the real and proper picture of each and every sale transaction entered into by the assessee on day-to-day basis in the cash book. The system of accountancy does not change from assessee to assessee. It is static and has its application uniformly to all assesses any kind of business. An explanation if offered would not enable the assessee to prove the sanctity of account books if it is noticed that the same does not conform to its basis principle.

8. In our opinion, therefore, it was clearly found to be a case of unaccounted or one may say suppressed sales to the extent of Rs. 1,40,340 which the assessee had transacted in the year in question. As rightly observed by the Assessing Officer the assessee could not make any effort of reconciliation with the Indian Oil Corporation to show their genuineness with whom they had transacted in purchase of the kerosene oil.

9. In view of the aforesaid discussion, we answer the question referred in this reference against the assessee and in favour of Revenue.

10. No costs.