

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) DB Income Tax Appeal No.122/2015
Pr. Commissioner of Income Tax

Vs.

M/s. Bhawani Silicate Industries

(2) DB Income Tax Appeal No.121/2015
Pr. Commissioner of Income Tax

Vs.

M/s. Bhawani Silicate Industries

Date of Order :: 30/07/2015

PRESENT

HON'BLE MR. JUSTICE AJAY RASTOGI

HON'BLE MR. JUSTICE J.K. RANKA

Mr. Sameer Jain Adv., counsel for the appellant

BY THE COURT (Per Hon'ble Ranka, J.):

1. Both these income tax appeals u/Sec. 260A of the Income Tax Act, by the appellant-Revenue are directed against order dt.13/02/2015 passed by the Income Tax Appellate Tribunal, Jaipur Bench (for short, 'Tribunal') and relate to the assessment years 2008-09 & 2009-10.

2. Since the facts are identical and the controversy involved is common, both the appeals are being decided by this common order.

3. The brief facts, which are relevant for disposal of the present appeal, are that the respondent-assessee is a partnership firm and is carrying on business of manufacturing of edible oil and oil cake from mustard oil and sale thereof. It is claimed that the assessee maintains complete books of accounts

supported by supporting material and accounts are audited. The assessee is also maintaining complete details of production of edible oil and stock register/production register in quantitative details of the trading account, which was placed before the Assessing Officer (for short, 'AO').

4. During the course of assessment proceedings, the AO, while perusing the stock register, found that there were certain discrepancies mainly (i) that the stock register/ production register are not maintained in terms of quality wise and in the absence of quality of seeds, proper/actual analysis of yield of edible oil and oil cake from mustard oil cannot be ascertained; (ii) the production register/ manufacturing register does not contain day to day detail of shortage of particular lots and (iii) it was noticed that details of oil and cakes are maintained on daily basis but shortage has been accounted in only few months and not regularly and finding these discrepancies, held that the stock register/ production register is not verifiable, is not maintained in proper manner and the assessee could manipulate the production according to its convenience and true profits were not deductible.

5. The assessee furnished explanation but the AO was not satisfied with the explanation so offered and ultimately rejected the books of accounts u/Sec. 145(3) of the Act and came to the conclusion that since the trading results are not verifiable and therefore, proper profits cannot be deduced and

thus he had no alternative except to reject the books of accounts and accordingly rejected the books of accounts and applied GP Rate (Gross Profit Rate) of 1.98% in the Assessment Year 2008-09 as against 1.70% shown and made a trading addition of Rs.15,80,694/- and in the Assessment Year 2009-10, on the same facts and analysis, made a trading addition of Rs.47,07,724/- by applying GP Rate of 1.98% as was applied earlier as against shown at 1.39%.

6. The assessee challenged the matter in appeal before the Commissioner of Income Tax (Appeals) (for short, 'CIT(A)') who upheld the finding of the AO that the books of accounts have rightly been rejected, however, reduced the trading addition by adopting GP Rate of 1.75% upholding the addition of Rs.2,80,383/- in the Assessment Year 2008-09 and GP Rate of 1.50% upholding the trading addition of Rs.8,82,962/- in the Assessment Year 2009-10.

7. Both the AO as well as the assessee carried the matter in further appeal before the Tribunal who accepted the contention of the assessee that the manner in which the record was maintained, the books of accounts could not have been rejected and accordingly even the trading addition, which was sustained and upheld by the CIT(A), was deleted. Hence this appeal.

8. Ld. counsel for the Revenue contended that when both the AO as well as CIT(A) found that there were several

discrepancies noticed in maintenance of the stock register/ production register, then the Tribunal erred in coming to its own reasoning and accepted that the stock register/ production register was just and proper. He contended that there was no material before the Tribunal to come to this conclusion and a finding of fact was reached by the AO as well as the first appellate authority that the books of accounts were not full proof and the finding of the Tribunal changed without any basis and evidence, is perverse. He further contended that qualitative details/ production ought to have been maintained by the assessee and the assessee manipulated the records in the manner it liked to declare the profits according to its own choice and convenience. He further contended that the AO simply relied upon the past orders and GP Rate that too has been discarded by the Tribunal which is without any basis and contended that substantial question of law arise out of the order of the Tribunal.

9. We have heard and considered the arguments advanced by counsel for the Revenue and in our view, the Tribunal, which is the ultimate final fact finding authority, after analyzing the material again placed before it and having gone into the issue once again has come to the conclusion that merely because qualitative record was not maintained and on this premise, the books of accounts could not have been rejected. It is also an admitted fact that mustard seed is only

single commodity used by the assessee for manufacturing of mustard oil and the Tribunal noticed that the assessee filed yield percentage for two months before the AO in which no discrepancy was found by the AO. The Tribunal has found that the production of mustard oil is a continuous process and the seeds are put into the milling for continuous oil production. The Tribunal has further found that 80% of its mustard oil is by way of trading sale and neither discrepancies were noticed by the AO in either purchase or sale nor any sale or purchase, found unrecorded. The Tribunal also found that the books of accounts had been maintained in the same manner as in the past and the assessee cannot be expected to stop the plant as and when the new lot of mustard seed is subjected to crushing as manufacturing of mustard oil is a continuous process. The Tribunal has also found as a finding of fact that except quality, quantity wise stock details has been maintained but no other defect was noticed by the AO in the quantitative details and after noticing the above fact, has come to the conclusion that the books of accounts ought not to have been rejected. In our view, such a finding of fact which has been reached by the Tribunal is after appreciating the material and evidence on record and such a finding has been arrived at by the Tribunal after analyzing the material and in our view, no substantial question of law can be said to arise out of the order of the Tribunal. Once the stock register has been held to be properly

maintained and has been held to be proper, no trading addition could have been made and rightly so, even otherwise, minor discrepancies cannot result into rejection of books of accounts.

10. Leave apart the above, in our view, what conclusions are to be reached is independent of the results shown in the books of accounts if any maintained by the assessee. Section 145 only provides the basis on which computation of income is to be made for the purpose of determining the amount of tax payable by an assessee. The provision by itself does not deal with the addition or deletion in the income. Best judgment is also based on the material available on record and therefore, while making an addition something more is to be collected by the AO who makes assessment of an assessee. As pointed out above, merely because there is some deficiency of quality wise record in the books of accounts, or merely because of rejection of the books of accounts, it does not mean that it must necessarily lead to addition in the return of income of the assessee. As noticed earlier, even the AO estimated the income by making estimated addition by applying a particular GP Rate so also the CIT(A) reduced it further. Therefore, these two authorities even while resorting to best judgment had no basis for coming to the conclusion reached and even in a case of estimated/adhoc addition, prima-facie, some material is required to be brought on record. The revenue has ample powers under the Act, if an assessee avoids or evades to unearth of tax

evasion, this observation is on the contention of counsel for the Revenue that except resorting to rejection of books of accounts, Revenue possibly has no other alternative and come to make estimated addition after resorting to provisions of Sec. 145(3).

11. In the light of the observations made herein above, the order of the Tribunal is just and proper and no perversity is noticed and accordingly we find that no substantial question of law can be said to arise out of the order of the Tribunal.

12. Consequently, both the appeals, being devoid of merit, are hereby dismissed.

(J.K. Ranka), J.

(Ajay Rastogi), J.

Raghu

Certificate: All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.

Raghu, Sr. PA.



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