

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 64 of 2004

C.I.T. UDAIPUR
V/S
BHERU LAL BOHARA

Mr. KK BISSA, for the appellant

Mr. ARUN BHANSALI, for the respondent

Date of Order : 5.3.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

This appeal by the Revenue, seeks to challenge the order of the learned Tribunal dt. 26.3.2004, relating to block period 87-88 to 97-98.

This appeal was admitted vide order dt. 7.11.2005, by framing two substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal had any material to hold that the assessee was having the opening capital as on 1.4.86 at Rs. 60 lacs in money lending business?

2. Whether the Tribunal was justified in allowing the claim of the assessee for deduction on account of bad debts at Rs. 4,04,525/- without finding that the conditions under Sec. 36(2A) (I) of the Income Tax Act, 1961 has been established so as to warrant allowance of bad debts?"

We have heard learned counsel for the parties, and have gone through the judgment of the learned Tribunal, being Annexure-5. The first question has been dealt with by the learned Tribunal in para 14 onwards of the impugned judgment. The learned Tribunal considered the fund flow statement, during the block period. Then, the conclusions have been given in para-14.7 onwards, and a look thereat shows, that it has noticed, that it would be clear from the orders of the tax authorities, that the business of the assessee's family was money lending, and this fact was proved from the certificate of the Gram Panchayat, Kelwa, certifying that about 40 books of accounts, relating to money lending, have been destroyed, as they were eaten by termites. Then, it has also been found, that father of the assessee was holding the license of money lending business, which was later on transferred in the name of the assessee, after the death of the father, and that, these facts have not been denied at any stage. Then it has been found, that the statements recorded by the assessing officer clearly establish, that the assessee was engaged in money lending business, and was charging interest @ 12 per cent in earlier years, and thereafter @ 15 to 18%, in subsequent years. Though these affidavits have been rejected by the assessing officer, but they have been believed by the learned Tribunal. Likewise it was found, that assessee had undisclosed

income from marble business, and in the assessment year 1997-98 the accepted income from marble business was at Rs. 130762/-, which does show, that the assessee was not engaged in marble business only, rather his major portion of the income was coming from another business, which cannot be other than the money lending. Then, for the purpose of arriving at the opening balance, it was noticed, that the assessee had separated from his father in 1963, and received assets of money lending business at Rs. 3.05 lacks, along with cash/stock of Rs. 50,000/-. In this regard there was a settlement deed, which has not been doubted. The other cash balance has been disbelieved, and the learned Tribunal found, that the assessee continued with the debtors of Rs. 3.50 lacks, in the money lending business since 1963, as is evident from the settlement deed. Then by calculating rate of interest that was being charged, a detailed chart has been worked out, as to how the capital went on being increased. Then, from out of that, after deducting personal, and non business expenditure, the figure of Rs. 60 lacks have been arrived at, to be the opening balance as on 1.4.86.

In our view, on the face of this, it cannot be said, that the learned Tribunal did not have any material, to hold, that the assessee was having the opening capital of Rs. 60 lacks, as on 1.4.86, rather the capital available in 1963 is continuing to be in money

lending business, and looking to the interest being charged by him, having been duly proved by evidence (oral), which has been believed by the learned Tribunal, and then, on mathematical calculations, the above figure has been arrived at. In our view, thus there was sufficient material available with the learned Tribunal, to arrive at the above figure of opening capital of Rs. 60 lacks as on 1.4.86.

Once it is found, that there was material, and there was some basis for making calculations by the learned Tribunal, then the findings remain pure finding of fact, not capable of being interfered with, in our appellate jurisdiction, under Section 260A. Thus, this question is required to be, and is, answered against the Revenue.

Coming to the question no. 2; This aspect has been considered by the learned Tribunal, from para-15 onwards, and in para-15.3 finding has been given, that the assessee had not led clinching evidence, that the bad debts amounting to Rs. 6 lacs were true, but then, consideration of 10% debtors, as bad debts, was found to be justified. Regarding Section 36, it was found to be not applicable, because it was not a case of regular assessment, based on books of accounts, but a case of block assessment, relating to undisclosed income.

In our view, even after going through the provisions of Section 36, even as a whole, we are of the view, that in the circumstances, Section 36 could not come against the assessee, for the purpose, for which it is sought to be invoked. Thus, the question no. 2 is also required to be, and is, answered against the Revenue.

In view of the above discussion, we do not find any merit in the appeal. The same is, therefore, dismissed.

(DEO NARAYAN THANVI), J.

(N.P.GUPTA), J.

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