

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 71 of 2004

C I T, BIKANER
V/S
DR. A. P. BAHAL

Mr. K.K. BISSA, for the appellant / petitioner.
Mr. RAMIT MEHTA, for the respondent.

Date of Order : 30.1.2008

HON'BLE SHRI N P GUPTA, J.

HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

This is Revenue's appeal against the order of the learned Income Tax Appellate Tribunal dated 19.9.2003, Annex.3, passed in Appeal No.365 of 1998, relating to assessment year 1994-95.

The appeal was admitted on 9.12.2004, by framing the following substantial question of law:-

"Whether in the facts and circumstances, when the books of accounts maintained by the assessee were rejected under Sec.145 and the assessment was made by the Assessing Officer to the best of his judgment, whether the Tribunal was justified in interfering with computation of income made by the Assessing Officer to the best of judgment by deleting all additions merely on the basis that

the exact material in support of the assessment was not brought on record by the Assessing Officer?"

The Assessing Officer, in this case, has rejected the books of accounts of the assessee, and had made an assessment under Section 145 i.e. best judgment assessment, and made certain additions under different heads, like outdoor patients income, investigation income, minor operation income, delivery case income, major operations income, bed charges, and so on.

In appeal, the learned Commissioner deleted certain additions, under the heads of outdoor patients, minor operations, delivery cases, major operations, and bed charges etc., by finding such additions, being not justified, as no material in support of this finding was brought on record. Likewise, it was found, that no attempt was made by the assessee to suppress the professional receipts, by not maintaining indoor patient registers. For deleting other additions also, detailed findings were given by the learned Commissioner. Thus, the appeal of the assessee was allowed.

Against that order, the Revenue went in appeal before the I.T.A.T., and the learned Tribunal found, that no material could be brought on record by the

Assessing Officer to justify the additions to the effect, as to whether, the receipts have been suppressed, and the additions have been made on the estimate basis, without any material in his possession. Then, accepting the reasons, given by the assessee, it was found by the learned Tribunal, that the additions were rightly deleted by the learned Commissioner.

We have heard the learned counsel for both the parties. The learned counsel for the revenue submitted that the learned Commissioner, so also the learned Tribunal have gone wrong in expecting the existence of positive material with the assessing officer, while making assessment under sec. 145. The learned counsel for the assessee has relied upon the judgment of this court in CIT v. Gotan Lime Khanij Udhyog, reported in 256 ITR 243, wherein it has been held, that Section 145 only provides the basis, on which computation of income is to be made for the purpose of determining the amount of tax. The provision, by itself, does not deal with addition or deletion to the income. Therefore, mere rejection of, or some deficiency in, the books of account, would not mean, that it must necessarily lead to additions to the returned income. It has also been held therein that the conclusions arrived-at in this regard, are findings of fact.

In that case, the assessee was a dealer in marble. The Assessing Officer had found, that the trading accounts of the assessee were not backed up with quantitative and qualitative stock details, and there was considerable fall in the gross profit rate. Invoking the provisions of Section 145(1), the Assessing Officer was not convinced by the reason, given by the assessee, that the assessee had employed a method of accounting regularly, and an addition of Rs.3,34,960/- was made, by increasing gross profit rate. The Commissioner in appeal, while substantially accepting the explanation of the assessee for reduction in the gross profit rate, was of the view, that the addition was on the higher side, and sustained an addition of Rs.34,000/- only, to cover up the possible leakage in the books of account. The Tribunal had upheld the invocation of the provisions of Section 145(1), but did not sustain the additions retained by the Commissioner. And this Court, in reference, held the finding, to be finding of fact.

Having gone through this judgment and after hearing learned counsel for the Revenue also, in our view, the question, as to whether the additions were rightly deleted by the C.I.T. and the I.T.A.T., is a pure question of fact, and cannot be said to be

tantamounting to any substantial question of law.

The question, framed by this Court on 9.12.2004, is therefore answered against the Revenue, and in favour of the assessee. The appeal is consequently dismissed.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

Rankawat JK, PS