IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 51 of 2004

C I T, JODHPUR
V/S
RAMDASS SARRAF

Mr. K.K.Bissa, for the appellant / petitioner.
Mr. Ramit Mehta, for the respondent.

Date of Order : 17.1.2008

HON'BLE SHRI N P GUPTA,J.

HON'BLE SHRI DEO NARAYAN THANVI,J.

ORDER

By this appeal, the Revenue seeks to challenge the order of the Tribunal dated 31.3.2003. While framing various substantial questions of law, however, by order dated 20.9.2004, the appeal was admitted on the following substantial question of law:

> "Whether the learned ITAT was factually and legally justified in upholding the order of the learned CIT (A) deleting the addition made on account of interest on debtors, in spite of the fact that the assessee himself had admitted before the Assessing Officer that interest @ 1.5% per month was charged on debtors?"

It is contended by the learned counsel for the Revenue, while inviting our attention to the finding recorded at page 24 of the order by the Assessing Officer, who has clearly recorded that it was admitted by the assessee that he has been charging interest at the rate of 1.5% per month on outstanding debtors, notwithstanding this, the learned Commissioner and the Tribunal have totally deleted the addition, made on account of interest, which is bad.

On the other hand, learned counsel for the assessee submitted that it has been found by the Tribunal that there is no evidence whatsoever to show that the assessee was charging any interest from the sundry debtors, as the small amounts remained outstanding in the course of business transaction and on those amounts, no interest was charged by the assessee and, therefore, the amount has been rightly deleted.

We have considered the submissions, and have gone through the orders of the Assessing Authority, Appellate Authority, and that of the Tribunal.

As the things appear, it cannot be assumed that the entire amount of Rs.4,58,064/- was the amount outstanding against the trade debtors of various small amounts, as contended by the learned counsel for the assessee, inasmuch as we find from the assessing officer's order that consequent upon search, the valuables, which were found, included gold ornaments relating to pawning business, weighing 837.38gms. Likewise, pawned silver items were found to be 6605.5 tolas (76.808 kgms.), and both these items were seized. Obviously, the pawned items were available with the assessee, as found in the search, were in his possession, consequent upon the pawn transaction, comprising of his having advanced loan to the owners of these valuables, and having retained those valuables as security for the advance, and as admitted by the assessee that he was charging interest at the rate of 1.5% per month. Obviously, there is no escape from the conclusion that in any case, the assessee was charging this interest relating to pawn transactions.

We are left to conjecture, that when the pawned articles were found and seized, there must be documents available with those valuables, showing the amount, for which the valuables had been pawned, and the assessing officer was required to total up those amounts, and calculate interest, accrued thereon, at the rate of 1.5% per month, which is the rate admitted by the assessee, and to have added that amount, instead of amount of Rs.82,000, as has been done by him. Obviously, the total deletion of the amount of interest cannot be sustained.

Accordingly, the question framed, is answered in favour of the Revenue, and against the assessee, and the impugned orders in this regard, to that extent, are set aside, and the matter is remitted back to the assessing authority to find out the total amount of pawn, and then calculate interest thereon at the rate of 1.5% per month, being the rate admitted by the assessee, and on that amount, assess income of the assessee, and then pass fresh order in accordance with law. The Assessing Officer is directed to decide the matter most expeditiously.

(DEO NARAYAN THANVI),J. (N P GUPTA),J.

Rankawat JK,PS