

Vinod Kumar Jain Vs. Asstt. Cit

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SooperKanoon Citation : sooperkanoon.com/707391

Court : Delhi

Decided On : Feb-03-2003

Reported in : (2004)91TTJ(Del)134

Appeal No. : IT(SS)A No. 89/Del/1998 3 February 2003 Block period 1987-88 to 20 June 1996

Appellant : Vinod Kumar Jain

Respondent : Asstt. Cit

Advocate for Pet/Ap. : P.C. Jain,;for the assessed; Shishir Jha,;for the Revenue

Judgement :

ORDER

R.K. Gupta, J.M.:

This is an appeal by assessed against the order of the assessing officer for the block period from 1-4-1986 to 20-6-1996, under section. 158BD of the Income Tax Act. As many as 8 grounds of appeal have been taken by the assessed at the time of filing of the appeal.

Ground Nos. 1 to 4, 7 and 8 were not pressed by the counsel of the assessed at the time of hearing. thereforee, they are dismissed as not pressed.

2. Ground No.. 5(a) is against the addition of. Rs. 38,50,772 for assessment year 1996-97 and Rs. 12,83,642 for assessment year 1997-98 (up to 20-6-1996) as undisclosed income by taking the GP rate at 1. 37 per cent.

3. The proceedings under section 158BD were initiated against assessed on the basis of search and seizure action taken in the case of Shri Sunil Agarwal group of cases. During the assessment proceedings the assessing officer noted that while filing the return for assessment year 1995-96, the assessed has declared GP rate of 1.37 per cent on total sales shown at Rs. 2,35,98,762' whereas the GP rate for asst. yrs. 1996-97 and 1997-98 were shown by assessed at 0.53 per cent and 0.54 per cent. The reasons for low GP rate for these two years were asked by the assessing officer from the assessed. The reply was filed by assessed, whereby it was stated that due to tough competition in the market there was decline in GP rate. However, the assessing officer was not satisfied. Accordingly, he applied a GP rate of 137 per cent for these two years, as shown by assessed for assessment year 1995-96. In this way the impugned additions, as mentioned in the grounds of appeal, were made by the assessing officer.

4. At the time of hearing, the counsel of the assessed stated that no incriminating documents whatsoever were found either during the course of search or during the course of assessment proceedings under section 158BD. It was further stated that neither the case of the department is that assessed has not recorded the true purchases and sales while maintaining regular books of account. It was further submitted that while completing the assessment under section 158BD, the assessing officer cannot disturb the trading results without bringing any material on record. The assessed is maintaining regular books of account and the returns of income were filed in time, as and when they were due. It was further stated that identical additions made in the case of Shri Sunil Agarwal have been deleted by the Tribunal. Attention of the Bench was drawn on copy of order of the Tribunal placed in the compilation. Further reliance was placed on various decisions 237 ITR 733 , CIT v. Rajendra Prasad Gupta , CIT v. Ravi Kant Jain (2001) 250 ITR 141 and D.N. Kamani (HUF) v. Dy. CIT . On the other hand, the learned Departmental Representative placed reliance on the order of the assessing officer.

5. After hearing rival submissions and perusing the relevant material on record, we find that assessed deserves to succeed in this ground. Undisputedly the assessed is maintaining regular books of account and all the purchases, and sales were vouched and recorded. Neither any incriminating documents. were found during the course of search, which suggests that the purchases and sales shown by assessed have not been recorded fully and truly. Similar additions were made in the case of Sunil Agarwal (supra), one of the group cases and the appeal of Shri Sunil Agarwal has been decided by the Tribunal in IT (SS) A No. 57/Del/1997, reported in Sunil Agarwal v. Asstt. CIT (2002) 83 ITD 1 (Del HI) , This issue was discussed in this case in detail and it was held that these types of additions are out of scope of Chapter XIV-B. thereforee, in view of all these facts and circumstances and in view of the decision of the Tribunal in the case of Sunil Agarwal (supra), we hold that the assessing officer exceeded his jurisdiction by disturbing the trading results while completing the assessment under section 168BD. thereforee, the impugned additions made by the assessing officer are deleted.

6. Ground No. 5(b) is consequential to ground No. 5(a). Ground No. 5(a) has already been decided by us in favor of assessed, thereforee, ground No. 5(b) has become infructuous which does not require any adjudication upon.

7. Ground No. 6 is against making an addition of Rs. 45 lakhs on protective basis on account of loan taken from M/s Nice International, proprietor Shri Sant Kumar Sharma. During the course of assessment proceedings, the assessing officer noticed that a loan of Rs, 45 lakhs has been received from one Shri Sant Kumar Sharma, proprietor of M/s Nice International. The assessed was required to explain the genuineness of the loan. Necessary confirmation was filed. While completing the assessment of Shri Sunil Agarwal, the statement of Shri Sant Kumar Sharma was recorded, whereby it was stated that Shri Sunil Agarwal had arranged an export order amounting to Rs. 1.36 crores from Delhi, and, thereforee, for purchase of material the loan was given. The AO made the addition of Rs. 45 lakhs on protective basis by observing that the addition of Rs. 1.,36 crores has been made in the case of Sunil Agarwal (supra) on substantive basis, which includes the sum of Rs. 45 lakhs shown as loan from M/s Nice International.

8. At the time of hearing, the counsel of the assessed stated that loan taken from Nice International has already been held as genuine by the Tribunal while disposing the appeal of Shri Sunil Agarwal. The attention of the Bench was drawn on paras 57 to 59 of the order of the Tribunal in the case of Sunil Kumar Agarwal (supra). On the other hand, the learned Departmental Representative simply placed reliance on the order of the assessing officer.

9. After perusing the relevant material, we find that this addition has no legs to stand. The issue in regard to loan taken from M/s Nice International was discussed in detail by the Tribunal while disposing the appeal of Shri Sunil Agarwal, The observations and findings of the Tribunal are giving in paras 51 to 59. The operative paragraph of the order of the Tribunal is 59. After considering all the material on record, it was held that the addition made on account of loan from Shri Sant Kumar Sharma, proprietor of M/s Nice International, was unjustified and the same was deleted. It was seen by the Tribunal that the statement of Shri Sant Kumar Sharma was recorded at Bombay whereby it has been clearly stated that the loan of Rs. 45 lakhs was advanced and the same was to be returned up to March, 1997, along with interest @ 1.5 per, cent per annum. After considering all these material, then the additions were deleted. thereforee, the issue involved in this appeal has already been decided while disposing the appeal in the case of Sunil Agarwal (supra). thereforee, in view of the reasoning given by the Tribunal in the case of Sunil Agarwal (supra), we delete this addition as made by the assessing officer on protective basis.

10. In the result, the appeal of the assessed is allowed in part.