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Court : Kerala

Decided On : Feb-28-2003

Reported in : [2003]130TAXMAN241(Ker)

Appeal No. : IT Reference No. 190 of 1999 28 February 2003

Appellant : V.K. Moosakutty

Respondent : Cit

Advocate for Pet/Ap. : M. Pathrose Mathai, John Ramesh and K.I. John, *for the Assessee* P.K.R. Menon, *for the Revenue*

Judgement :

G. Sivarajan, J.

The following question of law is referred by the Income Tax Appellate Tribunal, (hereinafter referred to as 'the Tribunal') as directed by this court in the judgment dated 10-11-1998, in O.P. No. 12962/98, at the instance of the assessee :

'Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in not allowing the corresponding adjustments in the closing stock valuation while admittedly the opening stock valuation stands reduced and the non-reduced valuation of the opening stock was reckoned in valuing the closing stock ?'

2. The first appellate authority in Annexure B order has clearly noted that the Deputy Commissioner vide his order dated 24-10-1988 directed the assessing officer to make an addition of Rs. 2 lakhs on account of inflated opening stock made in the accounts for the accounting year relevant to the assessment year 1986-87, and that the assessing authority has made the addition accordingly. The first appellate authority after referring to the relevant portions of the Deputy Commissioner's order held in paragraph 5 of the order that though the addition of Rs. 2 lakhs is on estimate basis, it is based on the discrepancies observed by the Deputy Commissioner, and that the addition of Rs. 2 lakhs directed by the Deputy Commissioner is based on a clear finding of fact. We find that the Tribunal has also considered the issue with reference to the order of the Deputy Commissioner. The Tribunal has noted in paragraph 4 of the order as follows :

'4.... It was on account of the amount thus being not available for enhancing the opening stock that the Deputy Commissioner directed the assessing officer to reduce Rs. 2 lakhs on account of the excessive opening stock valuation.'

This observation as such does not appear to follow from para 7 of the order of the Deputy Commissioner which we have already extracted. However, we find that the Tribunal has considered the question as to whether the contention of the assessee that he is entitled to a reduction of Rs. 2 lakhs in the value of the closing stock as on 31-3-1986 declared at Rs. 13,79,100. The Tribunal observed that the assessee's claim for reduction of the value of the closing stock can be allowed only if it is shown that the stock lying with the assessee on 31-3-1986 included the opening stock as on 1-4-1985. The Tribunal thereafter considered the details of the sale proceeds with reference to the opening stock arid the manufactured product and dealt with the issue as follows :

'9.... The contention of the learned representative of the assessee that with the reduction of the valuation of the opening stock, there should be. corresponding reduction in the valuation of the closing stock cannot be accepted in the absence of evidence to show that the closing stock included the same stock which was there as opening stock in the beginning of the accounting year. Merely on the basis of the argument that the closing stock has been valued at cost price (or market price whichever is lower) it would not be possible to allow a reduction in the valuation of the, closing stock, in the absence of any material to prove the availability of the same stock with the assessee. The sale collection of Rs. 34.65 lakhs against the opening stock of Rs. 11,40,434 and assessee's claim that in the valuation of the closing stock as on 31-3-1986, no value was taken for tile unsaleable stock would necessarily imply that the opening stock as on 1-4-1985 must have been disputed during the current year itself.'

3. We do not find any illegality in the order of the Tribunal. As already noticed, the contention of the assessee was that since the Deputy Commissioner has directed to deduct a sum of Rs. 2 lakhs from the opening stock, there must be a corresponding reduction of equal amount from the closing stock. This contention can be accepted only if there is a finding by the Deputy Commissioner as such. We have already extracted para 7 of the order of the Deputy Commissioner. We do not find any such finding in the said direction. On the other hand, what we find is that the Deputy Commissioner took into account the inflated nature of the opening stock and other discrepancies and observed that the ends of justice would be met if an addition of Rs. 2 lakhs is made to the returned income. This cannot be understood as a direction to reduce a sum of Rs. 2 lakhs from the opening stock. This itself is sufficient to reject the contention of the assessee that there must be a corresponding reduction from the closing stock. However, we find that the Tribunal has considered the matter in a different angle also to find out as to whether there is any scope for accepting the contention. The Tribunal was not able to accept the said contention. In these circumstances, we answer the question referred in the affirmative, that is in favour of the revenue and the assessee.

The ITR is dismissed with the above observations.