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Court : Rajasthan

Decided On : Jan-24-2002

Reported in : (2002)75TTJ(NULL)374

Appeal No. : ITA No. 1148/JP/1997 24 January 2002 A.Y. 1993-94

Appellant : Brij Lal

Respondent : ito

Advocate for Pet/Ap. : Satya Deo Saraf, *for the Assessee* G.R. Meghwal, *for the Revenue*

Judgement :
ORDER

B.L. Khatri, A.M.

This is an appeal by the assessee against the order of Commissioner (Appeals) for assessment year 1993-94. The assessee has, in all, agitated on 12 grounds. Ground Nos. 1 and 2 are regarding the rejection of trading account of iron and addition of Rs. 7,062 by the assessing officer. Ground Nos. 4 to and 10 are regarding enhancement of income of the assessee by Rs. 1,70,000 by the Commissioner (Appeals).

2. On scrutiny of iron account, the assessing officer noticed that the purchases are fully vouched but the sales were partly vouched. In iron a/c the assessee had

shown gross profit rate of 3.58 per cent, whereas in the immediately preceding assessment year the gross profit rate of 4.10 per cent was disclosed. On being asked for the reasons of low gross profit rate the assessee explained before the assessing officer that the sales are completely vouched and stock inventory has been kept, and as such the declared results be accepted. The assessing officer observed that the sales were not fully vouched and the closing stock was also not valued at cost price as mentioned in the return. Considering all these facts the assessing officer applied gross profit rate of 4 per cent on estimated sales of Rs. 21,85,000 and made an addition of Rs. 7,062, The Deputy Commissioner (Appeals) relied upon a comparable case of Bharat Trading Co. Station Road, Jodhpur, which had declared total sales of Rs. 1,34,48,346 and gross profit rate of 8.9 per cent. Even last year the above firm (Bharat Trading Co.) had declared gross profit rate of 8.3 per cent. After pointing out certain defects in the accounts and after referring to certain details on the issue, the Deputy Commissioner (Appeals) applied gross profit rate of 10 per cent and enhanced the income of the assessee by Rs. 1,70,000.

3. The learned authorised representative explained that the appellant had maintained quantitative tally and has given weightwise details of each item. The appellant had also maintained stock register. Sales and purchase were fully vouched. The stock register was also produced before the assessing officer and photocopy of the same was also filed before the Deputy Commissioner (Appeals). Therefore, it was contended that proviso to section 145(1) is not applicable. The Deputy Commissioner (Appeals) in para 3 of the appellate order observed that the appellant had maintained stock register in respect of Saria, Angle, Patti, Garder and Iron sheets. He further noted the following variation in purchase rates of Angle and Saria :

Angle

50 x 5

10,950

,

75x10mm

11,050

Difference Rs. 100

Saria

12mm round

11,400

,

16mm round

11,500

Difference Rs. 100

The learned Deputy Commissioner (Appeals) mentioned above rates as per quintal while the same were per M.T. (10 qtls). According to the learned Deputy Commissioner (Appeals), the assessee kept one quantity stock account in respect of angle and did not keep separate quantitative tally stock register in respect of each size of angle and similarly kept one quantitative tally of saria and not separate quantity stock register in respect of each size and hence, the stock register would be considered incomplete.

3.1. Towards end of para 3, the learned Deputy Commissioner (Appeals) held that if, besides lower gross profit, the quantitative details is also not correct, provisions of section 145 would be applicable. The learned Deputy Commissioner (Appeals) cited five decisions in support of application of provisions of section 145. The learned authorised representative submitted that none of the five cases cited by the learned Deputy Commissioner (Appeals) support his view that the stock register as maintained by the appellant was unacceptable, incomplete or defective. In all the five cases it has been held that besides other defects, the non-maintenance of the stock register was considered as justifying the application of

proviso to section 145(1) of the Act. The decisions are not applicable to the present case as the assessee had maintained the stock register in respect of each item like angle, saria, patti, garder and iron sheets. The stock register was produced before the learned Deputy Commissioner (Appeals) who had not pointed out any wrong statement or deficiency in the stock register. It was not necessary to maintain separate account ratewise. The learned Deputy Commissioner (Appeals) erred in law in equating the case with cases where stock register was not at all maintained.

3.2. The account books cannot be rejected simply because of lower gross profit or lower yield as held in the following decisions :

(i) Jaikumar Manichand v. ITO (1995) 51 TTJ (JP) 91

(ii) 26 TW 205;

(iii) 25 TW 38;

(iv) 18 TW 247;

(v) 26 TW 424; and

(vi) Asstt. CIT v. Mahesh T. Patodia (2001) 79 ITR 40 .

3.3. The day-to-day stock register maintained by the assessee showed datewise purchase and sales and stock of all the five items of the iron a/c. The quantitative tally datewise of each item were produced before the Deputy Commissioner (Appeals) and there was no shortage in any of the five items.

3.4. The assessee has shown gross profit rate of 3.58 per cent in iron a/c. in assessment years 1988-89 to 1990-91 ranging from 4.78 per cent to 4.2 per cent. The declared profit rate was 3.9 per cent to 4.10 per cent during assessment years 1991-92 and 1992-93. The fluctuation in gross profit rate cannot be considered low. Fluctuation in the gross profit rates was due to market conditions, rise/fall in price of iron and competition.

3.5. The order for assessment year 1984-85 shows that the trading account was accepted with specified mention that the books were backed by quantitative tally both purchases and sales and stock register., Similarly, for assessment year 1989-90 the order passed under section 143(3) shows that the trading result in iron a/c was accepted as it was found that the purchases and sales were vouched, quantitative tally was kept and stock register was also maintained. Similarly in assessment year 1998-99 the gross profit rate declared was accepted. In view of the past history and acceptance of trading result in all the assessment years, the rejection of trading a/c. in the year under appeal was not justified, The learned authorised representative referred to the following case-laws :

(i) Ram Prakash v. CIT (1983) 15 Taxman 533 (All);

(ii) 26 Tax World 447 (JDP Bench); and

(iii) (supra).

First of all it was contained that the assessing officer was not justified in rejecting the book results and making the addition of Rs. 7,062 and secondly Deputy Commissioner (Appeals) grossly erred in enhancing the income of the appellant by Rs. 1,70,000 by applying the gross profit rate of 10 per cent on the basis of comparable case of Jodhpur. The learned Deputy Commissioner (Appeals) did not even consider the submissions of the appellant and instead made enhancement of Rs. 1,70,000 on the basis of Bharat Trading Co. Station Road Jodhpur, where the declared gross profit was 8.9 per cent and last year declared gross profit rate of 8.33 per cent.

3.6. The learned Deputy Commissioner (Appeals) neither in the notice nor during hearing of appeal informed the appellant that the notice of enhancement was based on the trading result alleged to have been declared by M/s. Bharat Trading Co. Jodhpur. The particulars of the case, the nature of business, whether iron or hardware or other types of business, was not intimated to the assessee. Neither trading account nor the partners/proprietors' capital nor balance sheet were intimated. The assessee was denied opportunity to explain his case with reference to the case of Bharat Trading Co. On the basis of figures of sale of that party

mentioned in the order of Deputy Commissioner (Appeals) and place of business at Jodhpur, it cannot be said that it was a comparable case. It was not stated in the order that the sales of Rs. 1,34,48,346 or Rs. 2,19 crore was of iron alone and not of hardware.

3.7. The enhancement has been made without confronting the assessee with material obtained by the Deputy Commissioner (Appeals) behind the back of the assessee. The enhancement was against the principle of natural justice and cannot be sustained.

3.8. On the analogy of Supreme Court decision in Kishan Chand Chela Ram v. CIT : [1980]125ITR713(SC) , the information by way of sales and gross profit in case of Bharat Trading Co. obtained by the Deputy Commissioner (Appeals) could not be used against the assessee without confronting the assessee with material so collected by the Deputy Commissioner (Appeals). The learned authorised representative also referred to the following judgments :

(i) Sona Builders v. Union of India & Ors. : [2001]251ITR197(SC) ;

(ii) CIT v. Sham Lal (1980) 127 ITR 816 ; and

(iii) Asstt. CIT v. Mahesh T. Patodia (supra).

3.9. In the present case, even assuming that the proviso to section 145(1) was applicable in respect of iron a/c the assessing officer was bound to assess the income following the accepted past history of the case as was held in the following decisions :

(i) Ram Prakash v. CIT (supra),.

(ii) Bana Lal Jat v. Asstt. CIT 26 Tax World 447 [ITA Nos. 493 & 494 (Ju)/2000]; and

(iii) Asstt. CIT v. Mahesh T. Patodia (supra).

There was no lapse, error or omission on the part of the assessing officer which requires interference of the appellate authority to correct such error, lapse or

omission. The learned authorised representative also referred to the mistakes in the order of the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) had enhanced the income by Rs. 1,70,000 in iron a/c after deducting therefrom the gross profit estimated by the assessing officer. The working of addition of Rs. 1,70,000 is incorrect as follows :

Rs.

G.P. @ 10 per cent on sales of 21,82,777

2,18,278

Less : G. P. @ 4 per cent worked out by assessing officer

87,400

Difference of gross profit

1,30,878

4. The learned Departmental Representative supported the order of Deputy Commissioner (Appeals).

5. We have considered the rival submissions. We find that in this case the assessing officer without proper examination of books of account had observed that the sales were not fully vouched and the closing stock is also not valued on cost price as mentioned in the return. We find that the assessing officer has not properly examined the case and proceeded on the basis of casual remarks. From the past record and the future record it is evident that the trading result in iron account has been accepted with the remarks that purchase and sales were fully vouched, quantitative details and the stock register were also maintained. As regards the valuation of closing stock the assessing officer could not specify addition to be made on this ground, whereas the learned authorised representative submitted before the assessing officer and also before the Deputy Commissioner (Appeals) through letter dated 28-9-1995, that the assessee is valuing the stock of iron at cost price. The position of cost price of iron had been explained before the

Commissioner (Appeals) through letter dated 28-9-1995. We find that the assessing officer had not made any specific addition on this ground and the learned authorised representative has contended that the correct valuation method has been adopted. Therefore, this cannot be taken as a defect in the maintenance of accounts. Therefore, in our opinion, the assessing officer was not justified in invoking the proviso to section 145(1) and making the addition of Rs. 7,062.

6. As regards the enhancement by Rs. 1,70,000 by the Dy. Commissioner (Appeals), we find that the Deputy Commissioner (Appeals) has not examined the submissions made before him. He has proceeded on the basis of some instances quoted by him in respect of angle and saria wherein he found difference of Rs. 100 per quintal. whereas the assessee explained that they are maintaining details as per M.T. (10 qtls.). Secondly, the assessee is not required to maintain stock register rate-wise. The assessee has submitted complete stock and quantitative details in weight in respect of all the five items of iron account. First of all in this case the proviso to section 145(1) was not applicable. Secondly, the Deputy Commissioner (Appeals) has relied upon a comparable case of Bharat Trading Co., Jodhpur, the particulars of which had not been furnished to the assessee for rebuttal or for explanation on similarity of trade. The Deputy Commissioner (Appeals) could not explain whether the nature of business carried on by the assessee at Jodhpur was similar. The Deputy Commissioner (Appeals) should have compared the trading results with the firms of the same area, of the same nature of trade, of the same year after confronting with the facts of the case to the assessee, Therefore, we hold that the case relied upon by the Deputy Commissioner (Appeals) was without taking into account the principle of natural justice. Therefore, we hold, keeping in view a number of judgments quoted by the learned authorised representative that the Deputy Commissioner (Appeals) cannot enhance the income of the appellant without confronting the assessee with the facts of the case relied upon by the Deputy Commissioner (Appeals). Keeping in view all the facts and legal position explained above we delete the addition of Rs. 7,062 made by the assessing officer and also the addition subsequently enhanced by the Deputy Commissioner (Appeals) by Rs. 1,70,000.

7. Ground No. 3-Addition of Rs. 1,000 in colour and paint accountsIn colour and paint account the assessee declared gross profit of Rs. 12,800 on sale of Rs. 1,46,280 and gross profit rate of 8.75 per cent. The assessing officer had made an ad hoc addition Rs. 1,000. The Deputy Commissioner (Appeals) has confirmed this addition. The learned authorised representative submitted that on the assumption the gross profit rate of 8.85 per cent was reasonable, the gross profit rate of 8.75 per cent could not be considered unreasonable or low. The assessee is not expected to declare the same gross profit every year. There can be fluctuation of rates also. We have considered the rival submissions. We find that there is minor variation of gross profit rate to the extent of one per cent. The assessee is not expected to declare trading results with arithmetical accuracy. Therefore, the petty addition of Rs. 1,000 made by assessing officer and sustained by the Deputy Commissioner (Appeals) is deleted.

8. On page 2 of the assessment order the assessing officer has held that the household expenses shown by the assessee at Rs. 23,007 are low. The assessing officer estimated the household expenses of Rs. 30,000 warranting addition of Rs. 7,000. However, no addition was made as the same was covered by the addition of Rs. 8,000 in the trading account. The learned authorised representative submitted, due to above observation, that the addition for alleged low household expenses cannot be made. The assessing officer's order has been merged with the order of Deputy Commissioner (Appeals) and that order is merged with the order of Hon'ble Tribunal. The assessing officer had not brought any specific material on record to justify the trading addition of Rs. 7,000 besides the household expenses of Rs. 23,007. The assessee had also 8 bighas of agricultural land. 7 bighas had been leased and also one bigha was available for household expenses. The learned Departmental Representative relied upon the order of the assessing officer.

9. We have considered the rival submissions. We find that the assessing officer has not brought on record sufficient material or any headwise details of expenditure which would justify the estimated addition of Rs. 7,000. Therefore, no addition is called for on account of household expenses.

10. Ground No. 11 is regarding direction of the Deputy Commissioner (Appeals) in para 4 of his order to the assessing officer to charge interest under sections 234A, 234B and 234C. In this case, the return was filed by the assessee on 1-9-1993, which was due on 31-8-1993, which was a public holiday. Therefore, the return was filed in time, so no interest under section 234A was chargeable. Interest under section 234B cannot be charged through the direction of the Deputy Commissioner (Appeals) as the direction will not form part of regular assessment as defined in section 2(40).

11. The assessee had paid advance tax of Rs. 3,000 on 15-9-1992, and Rs. 3,000 on 15-12-1992, against the tax demand of Rs. 2,312 as per return. Interest under section 234C was not chargeable.

12. We have considered the rival submissions. In this case we have already deleted the additions of the assessing officer and the subsequent enhanced addition by the Deputy Commissioner (Appeals). Therefore, having regard to the fact that the additions made on all accounts had been deleted and keeping in view the reasons given by the learned authorised representative as discussed above we hold that in this case no interest under sections 234A, 234B and 234C is chargeable.

13. In the result, the appeal of the assessee is allowed.