

C. Packirisamy Vs. Assistant Commissioner of Income-tax

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Court : Chennai

Decided On : Dec-05-2008

Reported in : [2009]315ITR293(Mad)

Judge : Prabha Sridevan and ;K.K. Sasidharan, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 80U

Appeal No. : T.C.(A) No. 1585 of 2008

Appellant : C. Packirisamy

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : J. Narayanasamy, Adv.

Advocate for Pet/Ap. : K. Soundararajan, Adv.

Disposition : Appeal dismissed against assessee

Judgement :

K.K. Sasidharan, J.

1. This tax case is directed against the order dated June 25, 2008, in I.T.A. No. 1288/2006 on the file of the Income-tax Appellate Tribunal, Chennai, against the order of the Commissioner of Income-tax (Appeals), Tiruchi, dated February 27, 2006, in I.T.A. 110/05-06/2077 and the assessment order of the Income-tax

Officer, Ward 1 (2), Nagapattinam, dated March 28, 2005 in assessment number and year GI: 4227P/2002-03.

2. The following are the substantial questions of law raised for our consideration:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal erred in confirming the disallowance of the deduction under the opening capital account for 2002-03 when the returns filed for 1996-97 to 2001-02 were accepted by the Department?

2. Whether the opening capital account for 2002-03 can be rejected without rejecting the closing balance declared for 2001-02 in the respective return?

3. Whether the Tribunal has considered the fact that the appellant is a physically handicapped person and, therefore, he was eligible for a flat deduction of Rs. 40,000 per year under Section 80U of the Income-tax Act and, therefore, he has sufficient source to build up his capital account?

4. Whether the Tribunal had considered the fact that the net profit compared by the first appellate authority is of district headquarters dealers and not dealers in Mannargudi which is a Taluk headquarters?

5. Whether the Tribunal had considered the fact that the first appellate authority had not considered the comparable datas given by the appellant who are all doing business at Mannargudi?

6. Whether the Tribunal had passed a speaking order after considering the various issues?

Factual matrix:

3. The assessee is a dealer in Indian made foreign liquor and for the assessment year 2002-03, he filed his return of income wherein a sum of Rs. 52,970 was shown as total income. Since the assessee did not produce the books of account despite the direction given by the Assessing Officer, a best judgment assessment was made by determining the net profit at the rate of 5 per cent, of the total sales of Rs. 71,20,310 and accordingly, the net profit was arrived at Rs. 3,56,016. The

Assessing Officer was not inclined to accept the opening balance of capital shown by the assessee at Rs. 5,73,960 and accordingly, 50 per cent, of the opening balance was allowed and a sum of Rs. 2,86,980 was added and the assessment was completed. The said order was taken up in statutory appeal before the Commissioner of Income-tax.

4. The Commissioner of Income-tax (Appeals) opined that the estimate cannot be based on a hypothetical situation and on comparison of sales and the probable profit, the addition made by the Assessing Officer was reduced to Rs. 1,25,000. With regard to the disallowance of opening capital the Commissioner (Appeals) found that the assessee filed a bunch of returns for the year 1996-97 to 2001-02 only on October 29, 2002 and in those returns, he has shown income varying from Rs. 41,000 to Rs. 53,500. The Commissioner of Income-tax was of the view that it was not possible for the appellant to have a capital balance of Rs. 5,73,960 and, accordingly, a factual finding was arrived at by the Commissioner (Appeals) that it was not possible for the assessee to accumulate the capital to the extent shown by him. The Commissioner (Appeals) also found that the assessee failed to prove the source of opening capital and as to how it accumulated for the years. Accordingly, the Commissioner (Appeals) fully endorsed the view of the Assessing Officer with regard to the accumulation of capital. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal.

5. Even before the Tribunal, the assessee was not in a position to explain with documents as to how the net profit assessed by the Assessing Officer was incorrect. Similarly, the Tribunal found that the finding of the Assessing Officer as well as the Commissioner (Appeals) disallowing 50 per cent, of the opening balance was on the basis of materials and as such, no case was made out for deleting the addition of Rs. 2,86,900 as made by the Assessing Officer. Accordingly, the appeal was dismissed. It is the said order which is challenged in the present tax case.

6. The learned Counsel for the assessee contended that when the Revenue accepted the returns filed by the assessee for the year ending 2001-02 without any objection, the Assessing Officer was not justified in rejecting the opening

balance shown by the assessee. No other point was canvassed before us and as such, the scope of this tax case is confined to the disallowance of opening capital.

7. The learned standing Counsel appearing on behalf, of the Revenue submitted that the assessee was not in a position to account for the opening balance in spite of due opportunity given to him by the authorities and as such the Assessing Officer was fully justified in adding 50 per cent, of the opening balance as income and for recomputing the total income. The learned standing Counsel also contended that there is no question of law involved in the matter and the issue was decided by the authorities below only on the basis of factual materials.

Analysis

8. The assessment in question relates to the year 2002-03 and in the return filed by the assessee, he had declared income of Rs. 52,970. However, the assessee failed to produce the books of account despite the issue of notice by the Assessing Officer and as such pre-assessment notice was issued to the assessee and on his failure to substantiate his case, the Assessing Officer passed best judgment assessment by determining the net profit at the rate of 5 per cent, of the total sales of Rs. 71,20,310 and worked out the net profit at Rs. 3,51,016. The opening balance of capital as shown by the assessee was not accepted by the Assessing Officer and he disallowed 50 per cent, of the opening balance and an addition of Rs. 2,82,980 was made as income for want of evidence of the source for the opening balance. Accordingly, the total income was arrived at by the assessing authority.

9. The Commissioner of Income-tax, in the appeal preferred by the assessee confirmed the addition only to the extent of Rs. 1,25,000 on account of the low gross profit.

10. The assessee had filed a bunch of returns for the period from 1996-97 to 2001-02 and for the assessment year in question he had shown an opening balance of Rs. 5,73,960. Even though the onus was on the appellant to show that the amount claimed to be the opening capital was accumulated over the years, he was not in a position to substantiate his contention before the assessing authority

as well as before the Commissioner of Income-tax about the source of opening capital. Even before the Tribunal the assessee failed to prove the formation of capital. In view of the failure on the part of the assessee to prove the source of opening balance the authorities below rendered a factual finding against him.

11. It is true that estimation for a best judgment of assessment has to be based on well established principles and there should be materials available with the Assessing Officer to come to a definite conclusion. However, strict rules of evidence are not applicable to a proceeding before the tax authorities. In case the estimate made by the Assessing Officer is based on some materials, no interference is possible. Such estimation also involves some guess work and no mathematical formula could be developed in such cases for the purpose of making the estimation and to pass a best judgment assessment. The estimation made by the Assessing Officer by determining the net profit at 5 per cent, was reduced by the Commissioner (Appeals), and the said estimate being made on the basis of the established principles, we do not find any error so as to interfere in such estimation. The authorities below were fully justified in estimating the income from the business on the best judgment basis.

12. The finding with regard to deduction on account of disallowance of opening capital was made on account of the failure of the assessee to explain the source of opening capital in a satisfactory manner.

13. There is no question of law much less substantial question of law involved in the tax case. Accordingly, the tax case is dismissed. No costs. M.P. No. 1/2008 is also dismissed.