SUREME COURT OF INDIA

Chhabildas Tribhuvandas Shah

Vs.

Commissioner of Income-Tax, West Bengal

(J Shah, K S Rao and S Sikri JJ.)

21.09.1964

JUDGMENT

SIKRI, J.

1. This is an appeal by special leave granted by this court on November 5, 1962, and arises in the following circumstance. The appellant filed a return showing an income of Rs. 78,350 for the assessment year 1954-55. The Income-tax Officer in this assessment order dated February 26, 1958, did not accept the trading accounts and added Rs. 75,000. He came to the conclusion that the profits disclosed in comparison with the earlier year were to low and there were no day- to-day stock details for the purpose of verification. Another factor which he took into consideration was the ridiculously small withdrawals for personal expenditure in the partners' accounts. Shri R. S. Sanghvi had only withdrawn Rs. 6,900 and shri C. T. shah had only withdrawn Rs. 6,300.

2. The assessee appealed to the Appellate Assistant Commissioner, who by his order dated October 16, 1958, accepted the appeal and deleted the addition of Rs. 75,000 but as the closing stock of Eveready torches was under-valued to the tune of Rs. 4,490, he only allowed a reduction of Rs. 70,510. He accepted the contention urged on behalf of the assessee that in view of the fact that the assessee had to deal in hundreds items of goods of various sizes and varieties, it would mean a very heavy task to keep a stock account. He came to the conclusion that "if the sales made on commission basis are excluded on the balance sales the average profit margin would go up to about 5 1/2 per cent. which cannot be said to be unreasonable or inordinately low." He further stated that the Income-tax Officer had not been able to cite any case whether the profit margin disclosed was higher than that raveled by the books of the assessee. He could find out no defect in the accounts as such or any suppression of sales. He further remarked that the purchases were vouched, the sales were vouched and the parties involved in these transactions were identifiable.

3. The Income-tax Officer, appealed against the above decision to the Income-tax Appellate Tribunal, which restored the addition made by the Income-tax Officer, less the above sum of Rs. 4,490.

4. It was pointed out to the Appellate Tribunal that the Appellate Assistant Commissioner had lost sigh of the fact that even in the preceding year goods from the National Carbon Company Ltd. did

figure in the trading account of the respondent, and that if these goods are eliminated from the accounts, the margin of profit in the preceding year was 11.3 per cent. as against 5.8 per cent. of the year of account, as worked out by the Appellate Assistant Commissioner."

5. The Tribunal observed that :

"Since the respondents were doing business in the main on a wholesale basis there should have been no difficulty in tallying quantities in respect of major items of the trading account. In the absence of such a tally, the fall in the margin of profits cannot be satisfactorily explained by a proper analysis of the trading account. The fall in the margin is all the more difficult to explain in view of the fact that the respondents also had quota of imports worth about Rs. 8,00,000 which would have given them a handsome margin of profit. We are, therefore, satisfied that the proviso to section 13 was clearly applicable to the trading results in this case and having regard to the nature of business and the availability of imported materials the margin taken by the Income-tax Officer seems to be quite reasonable."

6. The assessee applied for a statement of the case to the Income-tax Appellate Tribunal, under section, 66(1) of the Indian Income-tax Act.

7. The Appellate Tribunal, by its order dated December 19, 1960, rejected the application on the ground that their conclusions in the order were essentially findings of fact and based on adequate and proper material on record and did not give rise to any question of law.

8. The assessee applied to the High Court, under section 66(2) of the Indian Income-tax Act, but the High Court, by its order dated October 3, 1961, dismissed the petition. This court, however, granted special leave to appeal and the appeal is now before us for disposal.

9. Mr. B. Sen, the learned counsel for the appellant, ugres before us that the Appellate Tribunal should have referred the question of law posed before it by the assessee. The question of law was in the following terms :

"Whether the order of the Tribunal, that the proviso to section 13 was clearly applicable to the trading results in this case, and resorting the addition made by the Income-tax officer to the extent of Rs. 70,510 is an order made without due consideration of the evidence and relevant materials on record and after considerating materials which are irrelevant to the enquiry or on material partly relevant and partly irrelevant and upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon inadmissible material and such as whether the Tribunal was wrong in restoring the additional should, therefore, be deleted from the assessment."

10. He urged that the proviso to section 13 could not be applied in the circumstances of this case. He said that in substance only two grounds had been taken for applying the proviso, namely, (1) that the appellant maintained no stock register, and (2) that the profits of the year were low in comparison with the previous years. He stated that these circumstances can never, as a matter of law, attract the applicability of the proviso. In this connection, he placed reliance on the decision of the Lahore High Court in pioneer sports Ltd. v. Commissioner of Income-tax. In that case, the Lahore High Court, held that the absence of a stock register and the lowness of the profits disclosed in comparison with the previous years were not adequate reasons for the Income-tax officer to reject the total profits returned by the company. It observed that the "economic blizzard" which affected

trade in the year under review (1930-31) and still prevalied would explain reduction in profits. However, the Lahore High Court in Ganga Ram Balmokand v. Commissioner of Income-tax dissented from this decision on the ground that "whether the accounts are reliable or not is a question of fact, to be determined solely by the Income-tax officer, and when he gives reasons for doing so, which are not apparently capricious or in judicial, it is not possible to disturb his finding merely on the ground that the material in support of those reasons in meagre or insufficient."

11. The next case relied on by Mr. Sen is the decision of the Punjab High Court in Pandit Bros v. Commissioner of Income-tax. The question of law referred to the High Court was "whether any addition may be made to the book version of business profits where no stock account is maintained, on the sole ground that the net profits disclosed appear to be insufficient in relation to the total turnover." The High Court held that the mere fact that the profits are low is a mere warning to the Income-tax Officer to look into the accounts more carefully and see whether there is material to lead him to the conclusion that there is something false in the accounts. It further held that the fact that there is no stock ragister only cautions him against the paucity of return made by the assessee. It will be noticed that the Income-tax Officer, in comparison with the previous years; he had only noticed the lowness of profits. In our view this decision has no application to the facts of this case.

12. What we have to see is whether the finding of the Appellate Tribunal that the income, profits and gains cannot properly be deduced from the method of accounting employed by the appellant is based on any material. The Appellate Tribunal has given two reasons for its conclusions. The first reason is that the appellant was doing business in the main on wholesale basis and there should have been no difficulty in tallying quantities in respect of major items of trading account. This certainly is a relevant consideration. In the absence of such a tally, the next reason given is that the fall in the margin is all the more difficult to explain in view of the fact that the appellant also had a quota of imports worth about Rs. 8,00,000 which would have given them a handsome margin of profit. This again is a relevant fact and it is well-known that imported goods fetch a very handsome margin of profit.

13. Accordingly, we hold that there is material in support of the impugned finding of the Appellate Tribunal.

14. We may point out that we are not concerned with the correctness of the conclusion and we are only concerned with the question whether there is any material in support of the finding of the Appellate Tribunal. In case involving the applicability of the proviso to section 13, the question cases involving the applicability of the proviso to section 13, the question to be determined by the Income-tax Officer is a question of fact, namely, whether the income, profits and gains can or cannot be properly deduced from the method of accounting regularly adopted by the assessee. There is nothing special about this question of fact, and generally the only question of law that can possibly arise is whether there is any material for the finding. In our opinion the High Court was right in refusing to call for a statement of the case.

15. In the result, the appeal fails and is dismissed with costs.

16. Appeal dismissed.