

HIGH COURT OF ALLAHABAD

Commissioner of Income-tax

v.

Raghuraji Agro Industries (P.) Ltd.*

RAJIV SHARMA AND DR. SATISH CHANDRA, JJ.

IT APPEAL NO. 30 OF 2010

SEPTEMBER 30, 2013

ORDER

Dr. Satish Chandra, J. - The present appeal has been filed by the appellant-Department under Section 260A of the Income-Tax Act, 1961, against the judgment and order dated 23.09.2009, passed by the Income Tax Appellate Tribunal, Lucknow, in I.T.A. No.365/Luc/2009, for the assessment year 2001-2002.

2. On 09.03.2010, a Coordinate Bench of this Court has admitted the appeal on the following substantial questions of law:—

"1. Whether the learned Income Tax Appellate Tribunal has been right in law and on facts in revising their considered view that reference u/s 131 (1)(d) of the I.T.Act to District Valuation Officer was justified.

2. Whether the learned Income Tax Appellate Tribunal has rightly deleted the additions made by the Assessing Officer on the ground that Assessing Officer had not rejected books of account of the assessee whereas rejection of books of account is not a necessary condition for addition u/s 69 of the I.T.Act, 1961."

3. The brief facts of the case are that the assessee has shown Nil income, but the A.O. passed an order under Section 143(3) of the Act and observed that the assessee has constructed a factory building by showing lesser investment. So, he referred the matter under Section 142 A of the Act to the DVO. After receiving report from the DVO, he made an addition of Rs.59,40,051/- for the difference by treating the same as income from the undisclosed source, but the CIT(A) has deleted the said addition and the Tribunal has confirmed the same. Being aggrieved, the Department has filed the present appeal.

4. With this background, Sri Prashant Kumar, learned counsel for the Department has justified the order passed by the A.O. He submits that the assessee has shown the lesser investment in the factory building. The Tribunal had upheld the validity of the reference made under Section 131(1)(d) of the Act

by observing that after insertion of Section 142A with retrospective effect from 15.11.1972, the reference made under Section 131(1)(d) will be deemed to have been made under Section 142-A of the Act. He further submits that the issue relating to the validity of the reference to DVO was not before the CIT(A) and, therefore, both the orders passed by the appellate authorities, will have to be set aside.

5. On the other hand, learned counsel for the assessee has justified the impugned order.

6. After hearing both the parties and on perusal of the record, it appears that in the instant case, the A.O. has not rejected the books of account and made the addition on the basis of the report of the DVO. In the instant case, the CIT (A) has observed in its order that the A.O. has not specifically rejected the books of account and never pointed out any defects. The assessee submitted the books of account, vouchers, bills of building accounts which were duly examined by the A.O. with due application of mind and the same were never rejected. The reference to the DVO without rejecting the books of account is not desirable. In the case of *CIT v. Institute of Literacy Development*, ITA 180/2008 dated 16th September, 2013, this Hon'ble Court observed that "on the basis of the approved valuer, the assessee has declared the investment of the building, but the A.O. was not satisfied. So, he has referred the matter to the DVO who again estimated the cost and made the additions." Estimation is a question of fact as per the ratio laid down in the case of *Commissioner of Customs (Import) v. Stoneman Marble Industries* [2011] 2 SCC, 758.

7. Needless to mention that the Tribunal is a final fact finding authority as per the ratio laid down in the case of *Kamala Ganpati v. Controller of Estate Duty*, [\[2002\] 253 ITR 692](#); and *M. Janardhan Rao v. Jt. CIT* [\[2005\] 273 ITR 50](#).

8. It may also be mentioned that the Hon'ble Apex Court in the case of *Sargam Cinema v. CIT* [\[2010\] 328 ITR 513](#) observed that the Assessing Authority could not refer the matter to the Departmental Valuation Officer in a case where there was a categorical finding recorded by the Tribunal that the books of account were never rejected.

9. In view of above, we find no reason to interfere with the impugned order passed by the Tribunal and the same is hereby sustained along with the reasons mentioned therein.

10. The answer to the substantial question of law is in favour of the assessee and against the department.

11. In the result, both the appeals filed by the Department are hereby dismissed.