HIGH COURT OF RAJASTHAN

Trilok Chand Girdharilal & Party

v.

Income-tax Officer, Ward -1, Sawaimadhopur*

AJAY RASTOGI AND J.K. RANKA, JJ.
DB IT APPEAL NO. 577 OF 2009†
JANUARY 21, 2014

ORDER

J.K. Ranka, J. - The instant Income Tax Appeal under Section 260-A is directed against the order of the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short the ITAT) dated 31.12.2008 and relates to the Assessment Year 1997-98.

2. The brief facts as emerging on the face of record are that the appellant-assessee is an Association of Persons (AOP) and is carrying on the business of Indian Made Country Liquor (IMCL) under Rule 67(1) and 67(K-K) of the Rajasthan Excise Rules, 1956 and retail sale of Beer and Indian Made Foreign Liquor (IMFL) under Rule 3A of the Rajasthan Foreign Liquor (Grant of Wholesale and Retail-off sale Licences) Rules, 1982 under exclusive privilege system. The assessee was awarded contract for Khandar group of shops in the district of Sawai Madhopur and was required to lift following quantity of liquor equal to the following contracted amount:—

No.	*Kind of Liquor*	*Minimum Guarantee Amount*
i	Country Liquor	Rs. 5180000/-
ii	IMFL	Rs. 1150000/-
iii	Beer	Rs. 405000/-
		Total Rs. 6735000/-

3. The assessee filed return of income declaring an income of Rs. 90,722/- and produced in pursuance of notice under Section 143(2), books of account, consisting of cash book, ledger, daily sales register, salary register, purchase bills, vouchers for expenses before the Assessing Officer.

4. The Assessing Officer was not satisfied with the way by which the books of account were maintained as also non-production of the vouchers mainly relating to sale of the liquor whether country liquor or IMFL or Beer and was of the opinion that when the records have not been properly maintained, therefore, profit cannot be properly deduced from such account and on the basis of such non-maintenance/non-production of the sale vouchers, the sale version, which was on estimate basis could not be accepted and when even the sale version was not open to verification, then the books of account had to be rejected under Section 145(3) of the I.T. Act. It was also observed by the Assessing Officer that though purchases could be said to be vouched but the entire sale version was manipulated. Accordingly, a show cause notice was issued. The assessee-respondent by filing a detailed explanation submitted that the assessee was unable to even lift the entire stock as initially contracted and had to bear the burden of paying penalty for not lifting the entire quantity as it was unable to sell the goods, which it had intended to. In so far as, the non-maintenance/non-production of sale vouchers are concerned, it was admitted by the assessee that sale bills have not been issued at all on the plea that a customer never likes to disclose his identity in the assessee's business and every one is in a hurry and wants to hide his face and, therefore, neither the sale vouchers were demanded nor issued and further the quantity and price of sale of Pouch/Bottle was so little that it was not feasible to maintain the sale vouchers.

5. However, the assessee submitted that the sale version is true and correct and is the actual sale

consideration realized by it. The assessee contended before the Assessing Officer that when purchases are vouched in detail and verifiable and sale is out of the said very purchases, therefore, it will not make any material difference, if the sale vouchers are not maintained.

6. However, the Assessing Officer was not satisfied with the explanation offered, further observed that as per the Excise Rules, the assessee has to maintain the stock register and inspection book after obtaining the same from the Excise Department and statement of sales and stock is also to be submitted to the Excise Inspector by 5th of the following month and which also have not been done, therefore was clearly of the opinion that the books/trading results have to be rejected and after invoking the provisions of Section 145(3) of the I.T. Act, the assessment has to be made.

7. The assessee submitted that the profitability has gone down even in comparison to immediate past Assessment Year as the business has become more competitive and the contract was taken at higher value than last year and tried to justify the result disclosed.

8. Considering all the submissions made by the assessee, the Assessing Officer after comparing comparable cases (Annex.1) applied net profit rate at 15% and made an addition of Rs. 1285500/- in the account of country liquor.

9. In IMFL and Beer account, the Assessing Officer applied net profit rate of 10% and also enhanced the sale and computed profit at Rs. 4,07,000/-.

10. An appeal was preferred by the assessee before the CIT(A), who granted partial relief.

11. Dis-satisfied with the order of the CIT(A) revenue preferred appeal before the ITAT while cross objection was filed by the assessee; while revenue challenged deletion of the amount, the assessee challenged the sustenance of the amount. However, the ITAT being not satisfied with the order of the CIT(A), directed that the matter be restored back to the Assessing Officer for re-deciding the issue.

12. In the fresh inning, the Assessing Officer again required the assessee to justify the book results and so also justify the claim of expenses and again repeated the addition of Rs. 1285500/- in the country liquor account so also Rs. 4,07,000/- in IMFL and Beer account. The matter again travelled to CIT(A), who again partially allowed relief to the assessee and after analysing the provisions and facts and comparing the cases of other similarly situated contractors of liquor sustained addition to the extent of Rs. 828324/- in country liquor account and Rs. 132536/- in IMFL & Beer account.

13. Dis-satisfied with the said order of the CIT(A), again while the revenue preferred an appeal before the ITAT on the reduction of the addition, the assessee filed a cross objection on account of sustenance of the addition, as aforesaid.

14. The Tribunal upheld the order of the CIT(A) while observing that in the facts and circumstances of the case, the order of the CIT(A) was perfectly justified who had adopted average gross profit and accordingly sustained the order of the CIT(A).

15. It is this order, which is being assailed before us by the appellant-assessee.

16. Shri Gunjan Pathak, counsel for the appellant vehemently submitted that the Tribunal is not justified in not deleting the trading additions both on account of Indian Made Country Liquor as also Indian Made Foreign Liquor and on Beer account as the appellant declared good trading results and there was no occasion for the Assessing Officer to have tinkered with trading additions. He would contend that before the Assessing Officer as also later on before the appellate authority he had cited comparable cases, wherein the G.P. rate declared by those assessees were lower than that of the assessee and in the light of those comparable cases the appellant having declared better trading results, no addition was required to be made. He would contend that all the purchases have been found to be admittedly verifiable as the same

had been purchased by the assessee through permit or government agencies and only because the assessee was unable to issue sale vouchers, the book results could not have been rejected so also merely because of this no trading addition could have been made. He would contend that results are fair and reasonable and no basis has been adopted by the Tribunal. Therefore substantial question of law arises out of the order of the Tribunal and needs consideration of this Court.

17. *Per contra*, Mrs. Parinitoo Jain, learned counsel for the revenue contended that not only the Tribunal but the CIT(A) also after elaborate discussion have upheld the part of the trading addition and she contended that merely because trading addition has been sustained therefore it cannot lead to substantial question of law. She would further contend that even the CIT(A) as well as the Tribunal after comparing cases with similar situated traders/liquor contractors rejected the contention of the assessee and sustained only partial trading addition. She contended that admittedly sale vouchers were not maintained and when sale vouchers were mot maintained, the trading results have rightly been rejected not only by the Assessing Officer but also the CIT(A) as well as upheld by the Tribunal and the assessee cannot contend that the books of account cannot be rejected on such account. She would further contend that merely applying a particular G.P. rate does not lead to substantial questions of law being involved rather it is a pure finding of fact and when there is a pure finding of fact no appeal is maintainable before this Court as no substantial question of law arises out of the said order. She would further contend that the revenue was more aggrieved in the matter as while total turnover declared by the assessee was Rs. 87.38 Lacs in country liquor account and Rs. 33.36 Lacs in IMFL and beer account. Thus, totalling to Rs. 120.74 Lacs, whereas income returned was only Rs. 90,722/- and when reasonable addition was made by the Assessing Officer in both accounts by Rs. 1692500/-. The CIT (A) sustained only Rs. 828324 in IMCL and Rs. 132536/- in IMFL & Beer account totaling Rs. 960860/- by giving almost more than 50% relief on the trading addition made. Thus, the appeal deserves to be dismissed.

18. We have considered the arguments advanced by the learned counsel for the parties as also perused the impugned orders and in our view when the sale vouchers have not been maintained or issued then certainly provisions of Section 145(3) can be invoked by the Revenue. The assessee cannot contend that when all other things are fully proved and only because sale vouchers are lacking then book results cannot be rejected. Thus, in our view, the authorities have rightly rejected the trading results by invoking the provisions of Section 145(3) of the Act. Now, when the trading results have been rejected, books of accounts have been rejected then a fair estimate is required to be made in the instant case.

19. While the Assessing Officer applied GP rate on the basis of certain comparable cases; the assessee also cited cases where GP rate was applied by the revenue and after appreciation of evidence on record, the CIT(A) applied an average Gross Profit rate as declared by the appellant and the other comparable cases relied upon by the assessee as well as the Assessing Officer. Therefore, in our view, there was no other alternate with the Assessing Officer in a case like this to have adopted an average gross profit rate, which has been upheld by the CIT(A) and ITAT.

20. The Hon'ble Apex Court in the case of *Chhabildas Tribhuvandas Shah* v. *CIT* [1966] 59 ITR 733 has observed as under:—

> "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 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."

21. This Court has consistently held that in a case, where GP rate is applied or trading addition is made or addition is on the basis of appreciation of evidence, no substantial question of law arise and we may refer to a few cases namely *CIT* v. *Amrapali Jewels (P.) Ltd.*, *Pansari Gems International* v. *CIT*, *CIT* v. *Dr. A.P. Bahal*[2010] 322 ITR 71 (Raj.) and *CIT* v. *Jaimal Ram Kasturi*.

22. The Hon'ble Apex Court as well as this Court has consistently held that in a case like this when it is a finding based on appreciation of evidence and is a pure finding of fact then no question of law much less substantial question of law arise out of the order of the Tribunal, we also do not find any perversity as well.

23. Consequently, we find no merit in the instant appeal, the same being devoid of merit is hereby dismissed *in limine*. No order as to cost.

S.K.J

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*In favour of revenue.
†Appeal arising out of order of Tribunal, dated 31-12-2008.