

Court No. - 39

Case :- INCOME TAX APPEAL No. - 35 of 2024

Appellant :- The Pr Commissioner Of Income Tax, Aaykar Bhawan And Another

Respondent :- The Mahabir Jute Mills Lts. Sahjanwah Gorakhpur

Counsel for Appellant :- Gaurav Mahajan

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Sri Gaurav Mahajan, learned counsel for the revenue and Sri Ashish Bansal, learned counsel for the assessee.
2. Present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') arising from the order of the Income Tax Appellate Tribunal, Varanasi Bench, Varanasi dated 16.11.2023 in Income Tax Appeal No. 217/ALLD/2017 for A.Y. 2014-15. By that order, the Tribunal has dismissed the appeal filed by the revenue and confirmed the order of the CIT (Appeals) dated 03.05.2017.
3. The appeal has been pressed on the following questions of law :

"1. Whether the Tribunal has failed to appreciate that the A.O. after considering the entirety of the case had applied the average gross profit rate of the last 3 assessment years to determine the gross profit of the assessee at Rs. 11,65,08,583/- as against the disclosed gross profit of Rs. 8,00,48,015/- shown by the assessee thus making an addition of undisclosed profit of Rs. 3,64,60,658/- in the hands of the assessee while framing the assessment u/s 143(3) of the Act ?

2. Whether the A.O. had rightly made the addition of Rs. 25,29,905/- by disallowing them u/s 40-A(3) of the Act as the assessee had made cash payments of expenses exceeding Rs. 20,000/- under different heads in contravention of the provisions of Section 40-A(3) of the Act and had failed to substantiate such payments with bills/vouchers etc. ?

3. Whether the Tribunal has erred in law in deleting the addition of Rs. 7,20,834/- on account of disallowance relating to unverified consignment sales expenses without reversing the findings of fact recorded by A.O. in

the assessment framed u/s 143(3) of the Act ?"

4. Having heard learned counsel for the parties and having perused the record, we find no merit in the present appeal. No substantial question of law is seen to have arisen. The findings returned by the Tribunal on all three issues are pure findings of fact. They are based on material and evidence on record. Thus, with respect to question no.1 (as framed in the memo of appeal), we find, the Assessing Officer had tinkered with the gross profit rate (disclosed by the assessee), arising from his finding on rejection of books of accounts. That finding was primarily based on other findings recorded by the Assessing Officer affecting the credibility of books of accounts of the assessee. Thus, according to the Assessing Officer the assessee had made payments in cash in excess of Rs. 20,000/- (each), totaling to Rs. 25,29,905/-. Those being in contravention of Section 40-A(3) of the Act, besides disallowance of expenditure claimed, the Assessing Officer found that the books of account of the assessee were not reliable. Also, the Assessing Officer had recorded a finding to disallow expenditure Rs. 7,20,834/- being 10% of the expenditure incurred on consignment sale claimed by the assessee, on *ad hoc* basis. According to the Assessing Officer both heads of expenditures were not duly vouched in the books of accounts of the assessee. Hence, the books were not reliable.

5. Other than the above, there no finding was recorded by the Assessing Officer to doubt the credibility or correctness or completeness of the books of accounts of the assessee. Yet, since the books of accounts of the assessee came to be rejected the Assessing Officer further proceeded to disturb the gross profit rate for the assessment year in question. Relying on gross profit rate achieved by the assessee in the previous three years, addition of about Rs. 3 crores was made.

6. The appeal filed by the assessee was allowed by the CIT (Appeals). That order has been confirmed by the Tribunal. The Tribunal has dealt with the issue in detail and found that the vouchers of expenditure incurred in cash were produced by the assessee before the Assessing Officer. It has referred to the written statement of the assessee dated 23.11.2016 submitted before the Assessing Officer. Also, the Tribunal has taken note of the fact that the issue of those vouchers was examined by the CIT (Appeals) and it was found, barring expenditure claimed against the head 'mess expenses' and 'travelling expenses of directors', totaling to less than Rs. 1 lakh, all other cash expenditures were duly vouched. Thus, addition of Rs. 25,48,011/- made under Section 40-A(3) of the Act was deleted. As a direct result of that finding, it has to be acknowledged that the vouchers in the books to the extent of Rs. 25,48,011/- were duly vouched and verified. The said finding of the Tribunal has not been shown to be perverse or patently erroneous.

7. As to the *ad hoc* disallowance of expenditure incurred on consignment sale, the Tribunal has found the issue to be purely academic in nature. It has observed, though there is recital in the assessment order, no addition was made in the final computation on income of the assessee. In absence of rectification proceeding undertaken by the Assessing Officer at the relevant time, the assessment order had attained finality to that extent. Hence no disputed expenditure existed.

8. We find no error on part of the Tribunal in recording either of the above findings. Once the CIT (Appeals) looked into the vouchers of cash expenses and recorded a clear finding that those were duly vouched except for two expenditures, in absence of any material shown to establish that that finding was perverse, there survives no room to interfere with the confirmation of such finding by the Tribunal (the last fact

finding authority). As to the issue of *ad hoc* disallowance of expenditure of consignment sale the Tribunal has rightly concluded the same to be an academic issue.

9. Seen in that light, in absence of any other objection found in the books of accounts of the assessee as may have been pressed before the Tribunal, there survives no room to reject the books of accounts of the assessee. Consequently, there is no intrinsic evidence to enhance the gross profit rate. Once the books of accounts of an assessee are found accepted the Assessing Officer may have remained within the confines of his powers and not disturbed the gross profit rate as that would remain in the nature of the result of the book entries and not an original entry by itself.

10. Settled principle in this regard being that the assessing officer may never step into the shoes of the assessee to infer more profit than may have been derived by the assessee and further his jurisdiction being confined to examine the correctness and completeness of the books of account, it never became open to the Assessing Officer to reject the gross profit rate disclosed by the assessee. It is also shown, the finding on acceptance of books of accounts of the assessee recorded to by the CIT (Appeals) was not even specifically challenged.

11. In such facts, the Tribunal has not erred in confirming the order of the CIT (Appeals). The findings recorded by the Tribunal are based on material and evidence on record.

12. Present appeal lacks merit and is accordingly **dismissed**.

Order Date :- 30.4.2024
Abhilash

(Donadi Ramesh, J.) (S. D. Singh, J.)