IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITAs-192-204-224-225-2015
Date of decision:- 03.08.2015

Commissioner of Income Tax (Central), Gurgaon
...Appellant

Versus

M/s Brinsar Foods Pvt. Ltd.
...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Rajesh Sethi, Advocate,
for the appellant.

* * * *

S.J. VAZIFDAR, A.C.J. (ORAL)

These appeals are against a common order dated 31.10.2014 passed by the Income Tax Appellate Tribunal in respect of the four assessment years i.e. 2005-2006, 2006-2007, 2007-2008 and 2008-2009 respectively.

2. The appellant contends that the following substantial questions of law arise in these appeals:-

> *"(i) Whether as per law and in the facts and circumstances of the case, the Hon'ble ITAT is justified in deleting the additions of ₹ 1,01,36,286/-, ₹ 80,31,236/-, ₹ 89,18,808/- and ₹ 99,45,783/- respectively made by the Assessing Officer under circumstances when assessee did not produce books of account and the Assessing Officer applied gross profit rate on estimate basis of information available on record and while making best judgement?*
>
> *(ii) Whether ITAT has erred in law by holding that gross profit rate declared by the assessee should be accepted whereas such gross profit rate had no basis?*
>
> *(iii) Whether the impugned order dated 31.10.2014 passed by ITAT is neither sustainable in the eyes of law nor maintainable*

> *in the facts and circumstances of the case and is perverse in nature?"*

Similar questions of law had been raised in respect of all the assessment years.

3. A search was conducted under Section 132 of the Income Tax Act, 1961 on 30.06.2010. The respondent/assessee was directed to produce the books of account. Admittedly, they failed to do so. It appears that there was a dispute between the Directors of the company each one blaming the other for the custody of the books. Be that as it may, the fact is that the books were not maintained and admittedly were not in the registered office where they ought to have been maintained. The question in these appeals is the GP rate to be applied. The assessee disclosed GP rates of 11.82%, 6.58%, 12.06% and 8.8% for the assessment years 2005-2006 to 2008-2009. The Assessing Officer only on the ground that the books had not been produced adopted a rate of 20%. The Assessing Officer observed that in the trade in which the respondent is engaged, namely, poultry farming the GP rate normally varies between the range of 20% to 22%. In the assessment order, it is stated as under:-

> *"The GP rate shown by the assessee varies from 6.58% to 12.06%. The company is in the business of poultry farm and I had the occasion to visit to GP rate shown in the similar case where the assessment had been completed last year and I had found that the GP rate shown was in the range of 20% to 22%."*

4. However, no particulars either of the "visit" or of the assessment order in such cases were furnished or even referred to. The same were not put to the assessee.

5. The CIT (Appeals) and the Tribunal rightly observed that there was no incriminating evidence against the respondent and no comparable

cases had been cited for arriving at the GP rate of 20% to 22%. A judgement of the Privy Council in *CIT Vs Laxmi Narain Badridas*, 5 ITR 170 was relied upon by the Tribunal, where it was held that the Asssessing Officer cannot act capriciously and on the basis of his personal knowledge of previous returns and local knowledge. In the present case, in any case, the same was not even put to the assessee.

6. In these circumstances, the orders of the CIT (Appeals) and the Tribunal cannot be said to be perverse. It is to say the least a possible view. No question of law arises.

7. The appeals are accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

03.08.2015
Amodh