

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 196 of 2015

Date of Decision: 24.8.2015

Harish Ahuja

....Appellant.

Versus

Commissioner of Income Tax, Chandigarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Ravi Shankar, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 31.12.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 484/CHD/2013 for the assessment year 2009-10, claiming the following substantial question of law:-

Whether on the facts and in law the ITAT is justified in upholding the rejection of books of account merely for

absence of stock register, despite there being no other defect in sale, purchase and books of accounts; which means non-fulfillment of ingredients u/s 145(3) of Income Tax Act, 1961 regarding incompleteness or incorrectness of books of account as the AO himself found that the stock shown is on the higher side?

2. Briefly stated, the facts, necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed his return of income 30.9.2009 for the assessment year 2009-10 declaring the income at ₹ 14,04,784/-. The Assessing Officer vide order dated 28.12.2011 (Annexure A-1) passed under Section 145(3) of the Act framed the assessment at ₹ 55,14,510/- by making an addition of ₹ 41,09,728/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 1.3.2013 (Annexure A-2) while partly allowing the appeal of the assessee restricted the GP rate to 9% and upheld the rejection of books of account. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 31.12.2014 (Annexure A-3) upheld the ground of rejection of books of account and directing the Assessing Officer to apply GP rate of 8% instead of 9% as ordered by the CIT(A). Hence, the present appeal by the assessee.

3. Learned counsel for the assessee relying upon the judgments in **Pandit Brothers v. Commissioner of Income-Tax, Delhi 26 ITR 159 (Punjab)**, **Ashoke Refractories Pvt. Ltd. v. Commissioner of Income Tax 279 ITR 457 (CAL)** and **Commissioner of Income Tax v. Smt. Poonam Rani, 326 ITR 223 (Delhi)** submitted that non-production of stock register by itself was not sufficient to invoke Section

145(3) of the Act. It was urged that the rejection of books of account by the Assessing Officer, in the facts and circumstances of the case, was uncalled for.

4. After hearing learned counsel for the assessee and perusing the record, we do not find any substance in the argument raised by the learned counsel. The Assessing Officer passed the assessment order under Section 143(3) of the Act by applying GP rate of 10% on gross sales of ₹ 11.74 crores after rejecting the books of account under Section 145(3) of the Act on the ground that no stock register was maintained by the assessee and, thus, made an addition of ₹ 41,09,728/- to the total returned income. The CIT(A) held that the figure of closing stock declared by the assessee in the profit and loss account was not verifiable in the absence of stock register and so the GP rate was not verifiable and accordingly restricted the GP rate to 9% and upheld the rejection of books of account. The Tribunal while upholding the orders of the Assessing Officer as well as the CIT(A) qua rejection of books of account, estimated the GP rate at 8% instead of 9% as ordered by the CIT(A).

5. The assessee was trading in the items of well established companies and is also a wholesaler C&F agent. In order to check veracity of the gross profit disclosed by the assessee, maintenance of stock register by the assessee was essential. The Assessing Officer had compared the gross profit rate of the assessee viz-a-viz other similar concerns. No satisfactory explanation had been furnished by the assessee for not maintaining the stock register. The rejection of books of account of the assessee by the Assessing Officer was, thus, justified.

The relevant findings recorded by the Tribunal read as under:-

“7. On consideration of the rival submissions, we are of the view rejection of the books of account is justified in the matter. The Assessing Officer has verified the GP rate of different concerns and found assessee has been declaring different GP, though same calculation was found to be defective by Id. CIT (Appeals) but the fact remains that there was a variation in the GP rate and further, assessee has not maintained any stock register, therefore the verification of the proper gross profit could not be done by the Assessing Officer. The valuation of the closing stock was thus, not verifiable. It was also found that assessee is trading in the items of well established companies and is a wholesaler/C&F agent. Therefore, stock register should have been maintained by assessee. Therefore, considering the objections raised by the Assessing Officer, the rejection of books of account is justified. We, therefore, confirm the orders of the authorities below in rejecting the books of account of the assessee. However, considering the history of the assessee in which the assessee has declared lesser gross profit and accepted by the Department, it would be reasonable and proper to direct the authorities below to apply gross profit rate of 8% instead of 9% applied by the Id. CIT(Appeals). The orders of authorities below to that extent are modified and it is directed that

income of the assessee be computed by applying GP rate of 8% instead of 9% applied by the Id. CIT (Appeals).”

6. Now adverting to the judgments in **Pandit Brothers, Ashoke Refractories Pvt. Ltd.** and **Smt. Poonam Rani's cases (supra)** relied upon by the learned counsel for the appellant, it may be noticed that the principle of law enunciated therein, is well recognized, however, being based on individual fact situation involved therein would be of no help to the case of the assessee. In view of the findings noticed hereinbefore, no benefit can be derived by the assessee from the aforesaid pronouncements.

7. In view of the above, no substantial question of law arises in this appeal. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 24, 2015
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(RAMENDRA JAIN)
JUDGE