IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITR No. 8 of 2001
Date of decision: 29.1.2020

M/s Sharat Kumar & Co.

.. Applicant

v.

The Commissioner of Income-Tax Patiala

.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Alok Mittal, Advocate for the applicant.

Mr. Vivek Sethi, Senior Standing Counsel and
Mr. Varun Issar, Junior Standing Counsel for the respondent.

...

AVNEESH JHINGAN, J.

In reference under Section 256(1) of the Income Tax Act, 1961 (for short, 'the Act'), following questions of law have been referred for opinion of this Court:

> "1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that assessee firm was not entitled to depreciation on car?
>
> 2. Whether on the facts and in circumstances of the case the Income Tax Appellate Tribunal was right in law in observing that the yield of Narma shown by private parties cannot be said to be comparable with corresponding yield shown by government agencies?"

The facts necessary for adjudication of the questions are that the assessee was dealing in Narma Cotton, Cotton Seed Oil and Khal. For the assessment year 1990-91, return was filed. The assessment under Section 143(3) of the Act was framed vide order dated 24.10.1991 making certain additions and disallowing certain deductions. The depreciation claimed on car and car expenses amounting to ₹81,724/- were disallowed. The yield of cotton shown by the assessee at 31.467% was found to be on lower side and 32% yield was applied. In appeal, the Appellate Authority allowed the depreciation as well as car expenses. With regard to yield of cotton, relief of ₹2,46,631/- was given and addition of ₹1,83,642/- was sustained. Both the assessee and the revenue filed appeals. The Tribunal vide order dated 26.6.1998 upheld the order of the Appellate Authority.

With regard to question (1), the car expenses and depreciation was rejected by the Tribunal considering the fact that the car was purchased on 26.3.1990, two vouchers for purchase of petrol dated 26.3.1990 and 28.3.1990 were produced. The vouchers were doubted as there was registration number written on the said vouchers whereas the number was issued to the assessee on 10.5.1990. The assessee failed to produce any evidence worth reliance to show that the vehicle was used during the said period for business purposes. This was coupled with the fact that in the subsequent year, $1/4^{th}$ depreciation and car expenses were disallowed by the authorities for personal use of the vehicle and the said position was accepted by the assessee. In the absence of any evidence to prove usage of the car for business purposes from 26.3.1990 to 31.3.1990, the claim was disallowed. The finding of the Tribunal warrants no interference as there is failure to show any illegality much less perversity.

As far as question (2) is concerned, the assessee was given due opportunity to explain the low yield as compared to the yield shown by other similarly situated dealers which was even higher than 32%, but no plausible explanation was offered. A vague statement made that other parties are mixing Desi cotton, the same was not substantiated. The Assessing Officer restricted the yield to 32% inspite of the fact that other dealers were showing higher than 32%, the Appellate Authority reduced it by .25%. The findings recorded by the authorities considering the similarly situated dealers smacks of no unreasonableness or arbitrariness, the facts and evidence have been duly appreciated. The findings recorded by the Tribunal are sustained. Both the questions are answered against the assessee.

The reference is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

29.1.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No