IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 ***2024:PHHC:004380-DB***

ITA-35-2020 (O & M)
Date of Decision: **15.01.2024**

The Pr. Commissioner of Income Tax, Rohtak .....Petitioner(s)

Versus

Rajeev Aggarwal ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel,
for the appellant.

G.S.SANDHAWALIA, J. (Oral)

CM-979-CII-2020

1. Application for condonation of delay of 10 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit.

2. Delay of 10 days in filing the appeal is condoned.

3. CM stands disposed of.

ITA-35-2020 (O & M)

4. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act') against the order of the Income Tax Appellate Tribunal, Delhi Bench 'F' New Delhi passed in ITA-3031/Del/2016 dated 22.05.2019 (Annexure A-III) for the assessment year 2011-12. The Tribunal has upheld the order and dismissed the appeal of the Revenue which had been preferred against the order of the Commissioner of Income Tax, Rohtak dated 21.03.2016 (Annexure A-II).

5. The following substantial questions of law as such are sought to be raised in the present appeal:-

> *"1. Whether the Ld. ITAT is right in law in applying the case of M/s R.B. Jessaran Fatehchand Vs. CIT 75 ITR 33 as the facts of the present case are different in that 99.9% of the sales, were in cash without revealing the particulars of the buyers and of the gold bars sold which had been supplied by MMTC with distinctive particulars?*
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> *2. Whether the Ld. ITAT is right in law in upholding the order in Ld. Cit(A), who deleted the addition of Rs.4,47,22,319/- made by AO on account of low GP as compared to compared to earlier years without any substantiating details and maximum sales are in case (sic. cash) and many of them were made without proper invoices. Moreover, stock register was never produced & negative stock was in the stock tally for the month of May & December 2010."*

6. The Assessing Officer, vide order dated 28.03.2014 (Annexure A-I), had made addition of Rs.4,47,22,319/- to be done in the income of the respondent-assessee by noticing that since the assessee was trading in gold and silver bullion in the assessment year 2009-10 and only in gold bullion under the year under assessment, the trading results of gold trading in respect of assessment year 2009-10 had to be considered for adopting in the year under assessment. The gross profit had been taken into account against the cost and the gold sold and thus, gross profit/costs of goods sold ratio would work out to 5.4%. It has, thus, applied it to make the addition. Findings are also recorded that stock register had not been produced on the ground of not being available in the books of accounts submitted during the assessment proceedings and the explanation offered by the assessee for the occurrences of negative stock cannot be considered as satisfactory.

7. In the order dated 21.03.2016 passed by the Commissioner (Appeals) (Annexure A-II), it was noticed that the appellant had produced the stock register duly maintained and proper verification of all sales and purchases, stock tally, stock register as well as the delivery challans was done. It was noticed that the assesee had shown in its submissions that the GP rate had registered an increase as compared with the previous year and the mistake in the purchase details for December had been reconciled by showing that the purchases of 31st Devember were not accounted for by the Assessing Officer. A reconciliation chart of weight had also been submitted by the assessee which was also not considered by the Assessing Officer and after examining the monthly trading account of May, 2010 and December, 2010, it was concluded that there was no gross loss and the Assessing Officer had mistakenly adopted the figures of negative stock. By noting that the assessee was following the FIFO method for valuing of closing stock instead of average weighted method, it was held that there was no reason to adopt a changed method. The relevant observations made by the Commissioner read thus:-

> *"It has also been explained that by the appellant there are 3 ways of fixing the gold price, viz cash value, value tom and spot value. Because of the value base adopted, the date of the delivery order is different from the date of invoice. However, goods are received through delivery challan which are sales through delivery bills. On a comparison of inward & outward movement of gold bars, it is seen that there was be no negative stock on any particular date.*
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> *In view of the above facts, I am of the opinion that the addition made in this case is wrong and unjustified. The mistakes in the adoption of accounting method by*

the AO as well as the mistakes in figures have been dealt with as above. I, therefore, delete the addition of Rs.4,47,22,319/-."

8. Against the same, the Revenue as such was in appeal. The Tribunal, vide its order dated 22.05.2019 (Annexure A-III), has also examined the record and it was noticed that the assessee had produced stock statement where no negative stock had been shown and, therefore, it was concluded that how the Assessing Officer had noted that the negative stock was not clear. The record produced showed that evidence was part of the account books furnished in support of the assessee's contention and the evidence had also been filed before the first Appellate Authority. Accordingly, it was held that it was not justified for rejecting the accounts simply because the names of the buyers were not mentioned in the bills of cash sales and it would not go to disbelieve the books of accounts since the assessee was trading in gold bullion. The day-to-day rates would have also been ascertainable from the rates declared by National market, Sarrafa Bazaars etc. Resultantly, a finding was recorded that the Assessing Officer was not justified in rejecting the book version of the assessee and to apply the profit rate of 0.54% without any good reason and no comparable instance had been given and there was no valid reason to doubt the record of the assessee and the assessee had maintained quantitative tally of the stock. The Revenue had not been, thus, able to make out a case that the assessee had not adopted consistent method of accounts and the profit and gains earned by the assessee could easily be detected from the books of accounts. The appeal as such was dismissed.

9. The above said discussion would go on to show that no

substantial question of law as such arises for consideration and the present appeal is totally based on the factual matrix whereby the documents have been examined by the two authorities below, in detail. In such circumstances, we are of the considered opinion that the findings recorded by the Assessing Officer were against the record as everything had been produced before it by the assessee, as has also been observed by the Commissioner of Income Tax and the Tribunal.

10. Accordingly, finding no reason to interfere in the well reasoned orders of the two authorities below, we dismiss the present appeal in the absence of any question of law arising which is the necessary pre-requisite for entertaining the appeal under Section 260A.

(G.S. SANDHAWALIA)
JUDGE

15.01.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No