IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

Commissioner of Income-Tax, Udaipur	Vs.	M/s. Udaipur Chemicals & Fertilisers (P) Ltd., Udaipur

D.B. INCOME TAX REF. APPLICATION NO.85/1998

Date of Order : 29th May 2007

HON'BLE MR.JUSTICE P.B.MAJMUDAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.K.K. Bissa for revenue.
Mr.J.P. Joshi with Mr. Tarun Joshi for assessee.

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BY THE COURT: (Per Hon'ble Maheshwari,J.)

This application under Section 256(2) of the Income Tax Act, 1961 ['the Act'] has been moved by the Commissioner of Income Tax, Udaipur because the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur has refused the application made by the Department to refer the following as a question of law for consideration of this Court:-

> ''Whether on the facts and in the circumstances of the case, the ITAT was justified in upholding the order of the CIT(A) who deleted the additions made on account of discrepancy in the value of closing stock as per books of account and the value declared to the Bank ?''

The question aforesaid was proposed for reference in the background of the facts that in relation to the assessment year 1982-83, the assessee Udaipur Chemicals & Fertilizer Private Limited, a company engaged in manufacture of single super phosphate from processing of raw phosphates with sulphuric acid, filed a return declaring loss of Rs.7,02,880/-. While passing the assessment order on 26.03.1985, the learned Assessing Officer ['the AO'] observed that many facts were similar to those of the last year like valuation of closing stock as per the assessee's record and as per the bank records; and that he shall be taking the same view as taken for the last year, more so because the department was in appeal on those points. The AO found that this year also there was a discrepancy in the value of closing stock declared in the books of account and that declared to the bank for the purpose of availing over-draft/loan facilities; that as per books of account, the value of closing stock, debtors and advances was Rs.20,13,748/-, while the value of these assets was declared to the bank at Rs.23,37,248/-; that there was a difference of Rs.3,23,500/- and the arguments of the assessee in justification were the same as those of last year which have already been rebutted and, therefore, need not be repeated. On the question of quantum of addition on this ground, the learned AO observed that though a communication was sent to Central Bank of India, Udaipur to know the exact value of

goods hypothecated and declared by assessee with it but reply of the bank was not received so far; and the case was getting time barred and, therefore, he would adopt the value as per the record available with him with a right to take remedial action in case of substantial difference being found after getting information from the bank. Accordingly, the learned AO proceeded to make addition to the tune of Rs.3,23,500/-, i.e., the entire amount of difference between the value of assets as stated in the books and as stated to the bank.

In appeal before the Commissioner of Income-Tax (Appeals) ['CIT(A)'], the assessee contended that no addition should have been made in relation to the value of assets because the value was shown on higher side to the banking authorities for the purpose of obtaining the loan and there was no discrepancy in the actual stock. The assessee refereed to the decision of Appellate Authorities in its own case for the assessment year 1981-82. After considering the factual position and the order passed in relation to the assessee for the assessment year 1981-82, the learned CIT(A) found that in the absence of any material to the contrary indicating any real discrepancy in the quantity of the stock as reflected in the books of accounts vis-à-vis the quantity of stock pledged with the bank, the addition was unjust and, accordingly, deleted the same.

In the appeal preferred by the Department, the Income Tax Appellate Tribunal ['the Tribunal'] agreed with the order passed by the CIT(A) and observed that it was not brought about by the AO as to whether the alleged discrepancy was only in value or in quantity too; and it was also not pointed out as to on which particular date the alleged discrepancy was noted.

The Department sought reference under Section 256(1) of the Act on the question noted at the outset. The Tribunal pointed out that there could be different valuation for different purposes; and since valuation of closing stock pledged before the banking authorities is for raising the loan facilities, there are chances of inflating the same. The Tribunal also pointed out that under the similar facts and circumstances, reference application moved by the department for the assessment year 1981-82 was rejected. In the circumstances of the case, the Tribunal was of opinion that the order in question does not give rise to any question of law.

The Department seeks reference by way of this application under Section 256(2) of the Act on the ground that the Tribunal has erred in not appreciating the fact that assessee had disclosed lesser value of assets in its books of accounts as compared to the value disclosed to the bank; and, thus, the difference of value represents the income of

assessee by way of under-valuation of stock; and that the AO was justified in making the additions.

Learned counsel for the department has, in support of the application, referred to the decisions in Coimbatore Spinning & Weaving Co. Ltd. Vs. Commissioner of Income-Tax : 95 ITR 375; Dhansiram Agarwalla Vs. Commissioner of Income–Tax : 201 ITR 192; Century Foams Pvt. Ltd. Vs. Commissioner of Income-Tax : 210 ITR 625; V. Rajan Vs. Commissioner of Income-Tax, Madras: 96 ITR 66; and S. Murugappa Chettiar Vs. Commissioner of Income-Tax: 174 ITR 245.

Having given a thoughtful consideration to the matter and having examined the record, we are satisfied with the correctness of the decision of the Appellate Authorities and are clearly of opinion that no question of law arise for consideration in this case.

The order passed by the learned AO makes out that the difference in the closing stock declared in the books of accounts and that declared to the bank was of the similar nature as that of the earlier year; and the learned AO proceeded on the premise that because the contention of the assessee was not accepted for the earlier year, the same was required to be rejected for the present assessment year too. Then, the AO pointed out that a communication was addressed to the Central Bank of India, Udaipur to know the

exact value of the goods hypothecated and declared by the assessee; and as the reply of the Bank was not received and the case was getting time barred, the learned AO adopted the valuation as per the record available with him and made addition to the tune of the difference between the two figures. The learned CIT(A) in appeal noted that in absence of any material to the contrary indicating any real discrepancy in the quantity of the stocks as reflected in the books of accounts vis-à-vis the quantity of stock pledged with the bank, the addition was not justified. The Tribunal again noted that it was not brought out by the AO as to whether the alleged discrepancy was only in the value or was in the quantity too; and hence, the contention of the department was not accepted.

There is no finding on the fundamental aspect of the matter if there was any discrepancy in the quantity of the stock as stated to the bank and as stated in books. The learned AO has merely proceeded on the discrepancy in the two figures in valuation of the closing stock, debtors and advances as per the books of accounts at Rs.20,13,748/- and as declared to the bank at Rs.23,37,248/-; and has directly proceeded to make addition of the difference amount of Rs.3,23,500/-. Mere variation in the valuation of assets as declared to the bank and as stated in the books of accounts was not conclusive; and the amount of difference itself could

not have been taken up for addition without further requisite inquiry about the true stock position and value of the assets.

The learned AO preferred to rely merely upon the fact that for such discrepancy addition was made in the earlier year; and on that basis alone is founded the addition for the year in question. It has been noted by the Appellate Authorities that such addition made for the earlier assessment year 1981-82 has not been countenanced in appeal; and the Tribunal has pointed out that under the similar facts and circumstances, reference application moved by the Revenue for the assessment year 1981-82 was rejected. Irrespective of that, we are clearly of opinion that for the year in question, i.e., assessment year 1982-83, the AO could not have made additions merely with reference to the variation in two valuations without coming to a conclusion that there was actual variance in the quantity of stock; and without finding as to when such discrepancy, if at all, occurred? The Appellate Authorities cannot be said to have erred in deleting such addition made without requisite inquiry and without essential finding about actual variation in the stock.

The decision relied upon by the learned counsel for the department, essentially dealing with cases where there had actual variation in the stock or where the material on record was sufficient to conclude on such variation in the quantity of

stock, cannot be considered having any application to the facts of the present case.

In the case of Century Foams (supra), the admitted position was of the assessee having given inflated figures of stock position. The Court noted,-

> "It is pertinent to observe that the difference was not only in the valuation of the stock but also in the items of the stocks hypothecated which on solemn declaration by the assessee was certain as "checked" and acted upon by the bank after due verification. If there was actual discrepancy in the stocks hypothecated to the bank and that shown in the accounts which the assessee failed to explain by any acceptable explanation or material, no exception can be taken to the addition made by the authorities and it was open to the Tribunal to come to such a conclusion that the assessee had stocks outside the account books."

In the case of Coimbatore Spinning & Weaving Pvt. Ltd. (supra) again, the quantity of pledged cotton stocks as stated to the bank and as stated in the books carried substantial variation and the assessee's explanation was not accepted. The Court said,-

> "Once the Tribunal finds that there were excess stocks after rejecting the explanation of the assessee, the conclusion is inescapable that the excess stocks should have come from undisclosed sources."

Same was the position in V. Rajan case (supra) where substantial discrepancy was found between the stock as per

the books and as per the statement given to the bank. In Murugappa Chettiar's case (supra) again, the difference was found in the stock of tiles as per the stock of the assessee and that supplied to the bank for overdraft purposes. It was also noticed that there was material before the Tribunal to hold that the accounts of the assessee were not reliable. The Court held on the question refereed to it that on the facts and in the circumstances of the case, the Tribunal was right in rejecting the accounts; and held that whether the accounts are correct or reliable or genuine is a question of fact. This case too does not lend any support to the contentions of the department.

As already noticed, there is a fundamental difference of factual position in the present case. There is no finding that present were a case of actual variation in the quantity of stocks itself.

Dhansiram Agarwalla's case was considered in the light that the assessment for the year 1972-73 was reopened on the ground that the assessee had failed to make full and true disclosure of the stock pledged to the bank which was in excess of the value stated in the books of account and balance sheet of the assessee. The assessee did not submit any return or reply to the notice under Section 148 of the Act. The ITO issued notice in terms of Section 142(1) of the Act and in spite of repeated granting of time, the assessee failed to comply with the terms of the notice and hence, the Income

Tax Officer completed the assessment under Section 144. The Income Tax Officer found it to be a case of suppression of stock and it was also noted that the assessee has certified to the bank that the statement of stock was true and correct. The said case too is of no help to the department for fundamental shortcoming in the present case that there is nothing on record to even suggest that there was actual discrepancy in the stock.

We are satisfied with the correctness of the order passed by the Tribunal and find no ground to call for a reference in the present case.

Accordingly, this reference application is rejected. No costs.

(DINESH MAHESHWARI), J. **(P.B.MAJMUDAR),J.**

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