

A.F.R.

Court No. - 3

Case :- INCOME TAX APPEAL No. - 395 of 2007

Appellant :- M/S Rai Wines Ras Bahar Colony

Respondent :- The Commissioner Of Income Tax

Counsel for Appellant :- R.S.Agarwal,Mayank Jain

Counsel for Respondent :- Ashok Kumar,Gaurav Mahajan

Hon'ble Shekhar B. Saraf,J.

Hon'ble Praveen Kumar Giri,J.

(Judgment delivered in open Court by Shekhar B. Saraf, J.)

1. This is an appeal under Section 260-A of the Income Tax Act, 1961. The substantial question of law admitted by the High Court is as follows:

"(iv). Whether, on the facts and circumstances of the case, the Income Tax Appellate tribunal was legally correct in sustaining the order of the CIT (Appeals) while making an enhancement to the income of the appellant to Rs.13,38,780/- over and above to the assessed income of the appellant amounting to Rs.25,63,730/- made by the Assessing Officer?"

2. We have heard Mr. R.S. Agarwal, learned counsel for the appellant as well as Mr. Gaurav Mahajan, learned counsel for the Income Tax Department.

3. It is to be noted that the findings recorded by the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT Appeals") and the Income Tax Appellate Tribunal are concurrent findings.

4. Mr. Agarwal has argued that the Tribunal has not gone into the aspect of enhancement of income by the CIT (Appeals) in any detail whatsoever and has, in a simplistic manner, justified the approach of the CIT (Appeals).

5. However, after perusing the order passed by the Income Tax Appellate Tribunal, we find that in paras 3 and 4 of the order, which are delineated below, the Tribunal has discussed the issue in detail. Paras. 3 and 4 are being quoted hereinbelow:

"3. The matter was appealed before Ld. CIT (Appeals) who examined the

issue in detail after considering the submissions and material available on record. *Ld. CIT (Appeals)* considered the rate of sales made by different assessee's in the vicinity. The assessee in the immediate preceding year had shown the selling rate of Rs. 31.30 per liter, which was accepted by the department while finalizing the assessment of that year. The *Id. CIT (Appeals)* considered the matter in the light of the facts that during the marriage and festival season, the rates are higher and towards the closing year will be slightly lower, but there would not be much variation in the selling rates. He, therefore, adopted the selling rate of Rs. 30.70 per liter as against 39.70, which is lower than the selling rate of Rs. 31.30 declared by the assessee in immediate preceding year. *Ld. CIT (Appeals)* allowed the margin of 60 paise per liter to take care of the increase in quota and contract money in the current year. Accordingly, he estimated the sale of country liquor at Rs. 3,85,21,40/- as against Rs. 3,56,12,160/- shown by the assessee and Rs. 4,98,13,853/- estimated by the Assessing Officer.

4. He further observed that rate of 5% after comparing assessee's case with certain other case applied by the Assessing Officer was not in order. The entire difference between the estimated sales and sales shown by the assessee in the books was required to be added to the net profit shown by the assessee. This would automatically give the net profit of the assessee. If it was done, then the difference in sales of Rs. 29,08,880/- was to be added to the net profit of Rs. 9,93,625/-. This resulted in enhancement of enhancement notice. He compared the cases where sales were estimated on basis of license fee. *Ld. CIT (Appeals)* after considering the reply of the assessee and various decisions referred to in appellate order came to the conclusion that income of assessee was to be estimated at Rs. 39,02,510/- as against estimated by Assessing Officer at Rs. 25,63,730/-. Thus, he enhanced the income by Rs.13,38,780/-."

6. Subsequently, the Tribunal has come to the finding that it is undisputed that the assessee had not maintained the cash memos and, therefore, the sale figures of the assessee could not be determined in any manner whatsoever. It is further held that rate of sale per liter had been determined by the authorities by taking into view the sales made by the shops in the adjoining areas. The Tribunal has further held that the assessee could not bring any contrary finding to indicate that the bulk sale rate was less than the figure decided by the *CIT (Appeals)* of Rs. 30.70 per liter.

7. In light of the same, the Tribunal held that the estimation of the sales has not been on the basis of license fee but on the basis of sales on facts of the assessee's own case in the immediate preceding year and no contrary facts have been brought on record by the assessee. Consequently, the Tribunal did not interfere with the finding of the *CIT (Appeals)*.

8. We are also fortified by the judgment of the Supreme Court in **Kachwala Gems Versus Joint Commissioner of Income Tax**, reported in [2007] 288 ITR 10 SC, wherein the Supreme Court

has held as follows:

"It is well-settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. In our opinion there was no arbitrariness in the present case on the part of the income-tax authorities. Thus, there is no force in this appeal, and it is dismissed accordingly. No costs."

9. Upon perusal of the Tribunal's order, we are of the view that when a best assessment is done, it is for the assessee to bring on record the facts that may reveal that the findings are perverse in nature. In the present case, no such material has been brought on record to convince us to dislodge the decision of the CIT (Appeals) and the Tribunal.

10. Accordingly, the substantial question of law is answered in favour of the revenue and against the assessee. The appeal is accordingly disposed of.

Order Date :- 25.7.2025

K.K. Maurya

(Praveen Kumar Giri, J.) (Shekhar B. Saraf, J.)