

Revenue couldn't reject audited books to make ex-parte assessment

Summary – The High Court of Madras in a recent case of R.C. Auto Centre (S.I.), (the Assessee) held that books of account cannot be rejected and best judgment assessment cannot be done in a case where accounts have been audited under section 44AB.

ORDER

Following are the questions of law raised by the assessee seeking admission of the Case for the assessment year 2009-10:—

- "(1) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessing officer can refuse to do a best judgment assessment, even though the assessee himself has admitted that his accounts are not full and complete?
- (2) Whether on the facts and circumstances of the case, the Tribunal was right in holding that books cannot be rejected and best judgment assessment cannot be done in a case where the accounts have been audited under Section 44AB?
- (3) Whether on the facts and circumstances of the case, the Tribunal ought to have taken into account the full and true disclosure made before the Settlement Commission regarding inflation of stock for earlier and subsequent years to decide the issue?"

2. The assessee is a firm engaged in the business of whole-sale and retail distribution of auto spares and accessories of two and three wheelers. The assessee returned the income of Rs.1,14,600/- and it is stated that the assessee had list of sundry creditors, which were numbering more than 1000. The assessee was called upon to get confirmation from all the Sundry creditors. Admittedly, the assessee produced confirmation letters from 264 parties and the assessee had offered the balance in respect of 84 parties amounting to Rs.16,49,000/- for taxation as creditors not traceable. The assessee stated in its letter dated 24.12.2011 that inspite of the strenuous efforts, they could not contact the several persons to obtain confirmation letters. Thus, the assessee requested the Assessing Officer to complete the assessment with a total addition of Rs.17,59,392/- including the returned amount. The Assessing Officer however pointed out that since more than two-third of sundry creditors remained unconfirmed, the assessment could not be completed as prayed for; further, a letter was given by the assessee on 28.12.2011, taking a strange plea that the accounts of the assessee being rejected, addition be made as per the figures submitted. The assessee also pointed out that the closing stock arrived at Rs.3,47,88,050/- as on 31.03.2009 was on estimate basis and there was no inventory of stock taken;

consequently, sales suppressions were introduced by the assessee as cash credits in the names of sundry creditors; thus, the assessee pleaded that the figures relating to unconfirmed creditors be taken as sales suppressions, however, the same were 'sales turnover'. The claim of the assessee was however rejected by the Assessing Officer on the ground that the assessee's turnover during the year was Rs.5,56,35,636/- and the assessee's accounts were audited by a qualified Chartered Accountant as required under Section 44AB of the Income Tax Act; there was nothing on record in the audit report to show that the closing stock was on estimate basis only and that the sales suppressions were introduced in the names of sundry creditors; the assessee had not produced any details to the effect that the actual closing stock as on 31.03.2009 was less than Rs.2,00,00,000/- in the balance sheet. In the background of the facts stated, the Assessing Officer invoked Section 68 of the Income Tax Act and treated the above amount as "income unexplained cash credit".

3. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals). It is seen from the narration therein that the assessee approached the Settlement Commission offering additional income for assessment in respect of the assessment years 2008-09, 2010-11, 2011-12 and 2012-13 and the year under consideration before us namely, assessment year 2009-10 was not the subject matter. The assessee pointed out that realizing the mistake as regards the original stand that the turnover had not been recorded in the books of accounts and had not been offered as 'Sales Turnover', the assessee filed their application before the Settlement Commission under 245C of the Income Tax Act, offering additional income for those assessment years referred to above. Thus, the assessee submitted that the application before the Settlement Commission was pending and hence, the additional amount of Rs.1,59,32,252/- under Section 68 of the Income Tax Act be deleted in full and in its place, the said amount would be treated as 'profits from business'. The Commissioner of Income Tax (Appeals) pointed out that in the letter addressed by the assessee dated 24.12.2011, it confirmed that they produced the confirmation letters from 264 parties and offered the balances in respect of 84 parties amounting to Rs.16,49,000/- for taxation as creditors were not traceable. When the assessee was confronted with the question that more than the two-third of sundry creditors remain unconfirmed, the assessee took this stand that the entire amount be treated as 'sales suppressions', hence, assessed as business income. The First Appellate Authority pointed out that the assessee had not produced any evidence to support its submissions that the closing stock was an estimated figure and the sales suppressions were reflected as sundry creditors. In the circumstances, the Commissioner of Income of Tax (Appeals), rejected the appeal filed by the assessee.

4. On further appeal before the Income Tax Appellate Tribunal, it was pointed out that no relevant documents/materials produced before it, that the report of the Auditor filed by the assessee revealed that the balance sheet, profit and loss account, income and expenditure account were in agreement with the books of accounts maintained at Head Office at Coimbatore and to this effect, the Auditor had given a certificate in Form No.3CB. Considering the original stand taken by the assessee as regards the confirmation from 264 parties and non-confirmation from 84 parties and the rest of the parties

remained unexplained, the assessee took altogether a different plea that the entire amount of 16,49,000/- was treated as closing stock. Thus, the Income Tax Appellate Tribunal held that the contradictory stand taken by the assessee merited to be noted for rejecting the assessee's plea. Thus, the appeal filed by the assessee was dismissed. Aggrieved by this, the assessee has filed the present Tax Case (Appeal).

5. Learned Senior counsel appearing for the assessee produced before us the paper book filed before the Income Tax Appellate Tribunal indicating the Auditor's certificate and the estimated stock available with reference to the earlier years too and would contend that the admitted case of the assessee was regular books of account were not maintained to indicate the extent of the stock position under sales and that the assessee had brought this aspect to the Assessing Officer; the Income Tax Appellate Tribunal should have appreciated the facts to arrive at a finding that the so called cash credits appearing in the books of accounts should be treated as 'business income' only and not under Section 68 of the Income Tax Act. She further pointed out that to the application and the Order of the Settlement Commission accepting the case of the assessee, which is now subject matter of writ petition No.34645 of 2012 filed before this Court at the instance of the Revenue.

6. Learned Senior counsel contended that on account of the proceedings pending in Writ Petition No.34645 of 2012, wherein stay of proceedings before the Settlement Commission had also been granted by this Court, the Tax Case (Appeal) be admitted. We do not agree with the submission made by the assessee, moreso, in the context of a convenient stand taken by the assessee as an after thought before the Assessing Officer as well as the First Appellate Authority that these credits were in fact business income, these contentions taken are certainly an indication that they are only in the nature of convenient plea to suit its needs and certainly not backed by any materials.

7. It is not denied by the assessee that there were over 1000 sundry creditors, of which admittedly, the assessee had got the confirmation letters from nearly 264 parties and in respect of 84 of parties, the assessee itself pleaded that the creditors were not traceable. Thus, when the assessee could produce the materials of confirmation in respect of the some of the creditors and admittedly, could not produce any such evidence from 84 parties, confronted with the present situation as regards the rest of the parties and to suit the convenience, the assessee claimed that the income be assessed as business income. The assessee had shifted its stand to have the assessment done to its desire, a course, which we do not approve of. It is no doubt true that the assessee had stated that they had not maintained the books of accounts particularly with reference to the stock. However, accounts were audited by a qualified Chartered Accountant as required under Section 44AB of the Income Tax Act. With the material particulars available as to the income of the assessee, we failed to understand how the assessee could insist on a best of judgment assessment only for gaining certain tax benefits.

8. In the light of the factual position seen herein, we do not find any justifiable grounds in the so called questions of law raised as a substantial questions of law.

In the result, the Tax Case (Appeal) stands dismissed at the admission itself. No costs. Consequently, connected miscellaneous petition is closed.