

## **ITAT's order quashing CIT(A)'s ruling based on overall analysis of evidence couldn't be interfered with: HC**

**Summary – The High Court of Delhi in a recent case of Mathur Marketing (P.) Ltd., (the Assessee) held that where Tribunal's findings were based on independent analysis and appreciation of evidence on record, same being findings of fact and did not indicate any unreasonableness or infirmity calling for interference**

**Commissioner (Appeals) in giving its findings could have considered previous orders (of revenue relating to past assessments), but they could not have been made main bases for reversing Assessing Officer's order**

### **Facts**

- The assessee was engaged in trading of rice. All transactions of purchase and sale were carried by assessee through one RDNP who acted as commission agent on assessee's behalf. It filed its return of income after claiming loss.
- The Assessing Officer summoned RD of above concern under section 131 and recorded his statement from which it concluded that transactions shown in accounts of several concerns were bogus as these concerns denied disclosed sales. It was discerned that some parties did not even exist. Accordingly loss claimed on specified transactions was disallowed.
- On appeal, the Commissioner (Appeals) examined reasons given by the Assessing Officer in detail and affirmed it, holding that loss claimed remained unsubstantiated and was rightly disallowed.
- On further appeal, the tribunal disposed of the appeal, holding that reasonable opportunity had to be given to assessee.
- On remand, the Assessing Officer after considering the explanations given by the assessee, and noting the fact that on several occasions, it did not appear or could not produce the requisite information, added the amounts and brought them to tax. The Assessing Officer's findings indicated that the purchases said to have been made were at unrealistic prices; the sale too was likewise undervalued. The payments due to the commission agents, were disbelieved.
- On appeal, the Commissioner (Appeals) allowed the assessee's request to consider additional evidence and thereafter proceeded to delete the amounts brought to tax during the assessment.
- On revenue's appeal, the Tribunal set aside the Commissioner (Appeals) order.
- On appeal by assessee to the High Court:

### **Held**

- The original assessment was affirmed, in the first instance, by the Commissioner (Appeals). However, the Tribunal remitted the matter for reconsideration after granting appropriate hearing to the assessee. This time, the Assessing Officer listed out several queries; they were either not answered at all, or answered inadequately. The Assessing Officer therefore, proceeded to analyze

the record. More importantly, in the remanded assessment proceedings, the Assessing Officer made inquiries into the amounts said to have been payable to the commission agents, the other commercial entities with which the assessee reported transactions and also looked into the rates of rice procured and sold. The Commissioner (Appeals), in the second round, set aside those findings. There were two premises for the appellate order: first, that the Commissioner (Appeals) differed from the Assessing Officer with regard to appreciation of evidence: it was held, in the appellate order, that some discrepancies with respect to the supplier's books and the statements by them could not result in such an adverse finding as to reject the assessee's claims as bogus, and two, that the previous years' assessments had showed a consistent pattern with regard to the revenue's behaviour, accepting the assessee's claims regarding the same suppliers and agents.

- It is opined that the Tribunal's reasoning is not entirely based on the consideration of the fresh evidence under rule 46A. It is based on its independent analysis and appreciation of the evidence on record. The assessee is correct in contending that the powers of the Commissioner (Appeals) are wide under section 250 ; that the authority can adduce fresh findings.
- A close scrutiny of the Tribunal's findings impugned in this case, would reveal that the Tribunal took note of the assessee's lapses in replying to the Assessing Officer's specific queries. It then considered the materials on record, in the form of statements made on behalf of RKDNP with regard to what was actually paid. The other findings regarding improbability of such huge amounts remaining outstanding, no interest payable to the commission agent were to bolster the finding that the transactions reported were not credible. Furthermore, the Assessing Officer went to great lengths to find out whether and if any genuine transactions were entered into by its suppliers; the Commissioner (Appeals) brushed aside those findings based on a solitary instance of export: of rice by another party. However, the findings with respect to the seven supplies and those involved in it and the statements recorded of representatives of those entities, were a matter of record.
- It is opined that at the end of the day, what the Tribunal did was to analyze the Commissioner (Appeals) findings. That it was entitled to do, clearly. And while doing so, it frowned upon the Commissioner (Appeals) order to the extent it considered fresh material. However, those observations by no means are the only basis for upsetting the Appellate Commissioner's order; rather they are only asides, so to speak. If those observations are ignored, what is apparent is that the Tribunal's findings are based on an independent analysis of the Assessing Officer's reasoning. What the Commissioner (Appeals) clearly could not have done was to prefer the past orders to ignore the detailed inquiry and the facts found by the Assessing Officer. While no doubt, the Commissioner (Appeals) also drew inferences, and did not rest his order on the fresh material he considered, that clearly was colored by the previous orders of the revenue in relation to the assessee.
- Upon an overall analysis of the facts, it is opined that while the Commissioner (Appeals) could have considered the previous orders (of the revenue relating to past assessments) they could not have been the main bases for reversing the Assessing Officer's order. The Tribunal's impugned order, it is

noticeable, is not based on the so called infirmity attached to the Commissioner (Appeals)'s order; it is based on its own overall analysis of the evidence. Those are clearly findings of fact, which do not indicate any unreasonableness or other infirmity, calling for interference.

- In light of the foregoing discussion, the appeal is dismissed in favour of the revenue and against the appellant assessee.