

High Court Of Delhi

Income Tax Reference No. 96 of 1989

Judgment Date:

15-07-2010

J.M. Wire Inds.

Vs

Commissioner of Income Tax

Bench :

**{ HON'BLE JUSTICE A.K.
SIKRIHON'BLE JUSTICE REVA
KHETRAPAL, JJ. }**

Citation :

[2012] 205 TAXMAN 134 (Delhi) ;

Judgment

1. In this reference made by the Income Tax Appellate Tribunal, on a reference application filed by the assessee before it, the solitary question which is referred for our consideration, reads as follows:

Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the onus was on the assessee to establish the source of receipt of the amounts aggregating Rs. 3 lakhs shown to have been received as sales proceeds from M/s Sandeep Wire Industries and in upholding its assessment as assessee's income from the undisclosed sources?

The only fact which needs to be taken note of to answer this question is that the assessee had, in the report filed by it, shown the sale of goods aggregating to Rs. 3 lacs to one M/s Sandeep Wire Industries and an amount of Rs. 3 lacs received against those sales. The Assessing Officer after making enquiries found that there was no such entity named M/s Sandeep Wire Industries and, therefore, did not accept the aforesaid transaction as "sale". Instead, the amount of Rs. 3 lacs received in the books of account was treated as income from undisclosed sources and added to the income of the assessee. Assessee's appeal before the CIT(A) as well as ITAT failed.

2. Mr. Aggarwal, learned counsel for the assessee, has proceeded on the premise that the order of the Assessing Officer be treated aforesaid receipt as income from undisclosed sources may be considered as correct. He has, however, made a neat submission before us viz. once the Assessing Officer had not accepted the receipt of the aforesaid amount as sale proceeds and treated it as income from undisclosed sources, sale figures to that extent should have been reduced. He contends that once the receipt is treated as income of Rs. 3 lacs from undisclosed sources and the Assessing Officer has not treated to it be the receipt qua sale proceeds, then the necessary consequence would be that the sale figures shown by the assessee for the relevant year would be reduced by this amount. He points out that whether the aforesaid amount is shown as receipt against sale proceeds or income from undisclosed sources, it would not make any difference as the income chargeable to tax would remain the same. To demonstrate this, Mr. Aggarwal has provided the following illustration:-

Trading Account (Declared By Assessee)

Rs.

Rs.

Opening Balance

1000.00

Sales

6000.00

Purchases

3000.00

Closing stock

2000.00

Profit

4000.00

Total

8000.00	5000.
Total	This submission of Mr. Aggarwal is not without substance. Once the Assessing Officer took the view that M/s Sandeep Wire Industries is not traceable and a non-existing entity, therefore, no sale was made to the said firm. No doubt, the Assessing Officer could consider the aforesaid receipt as income from undisclosed sources. It was also necessary for the Assessing Officer to reduce the total sale figure. This is more so, when there is no dispute about the figures of opening balance and closing balance disclosed by the assessee as those figures are accepted by the AO.
8000.00	
Trading Account (According To Revenue)	
Rs.	
Rs.	
Opening Balance	3. We may also note in this behalf that the assessee had taken this specific plea, in the alternative i.e. without prejudice to his contention that the sales were actually made and the receipt should not have been received as income from undisclosed sources before the CIT(A) as well as Income Tax Appellate Tribunal. However, the said plea was rejected by both these authorities observing that in order to accept this plea further evidence was required to be produced which was in the knowledge of the assessee. We fail to understand any rationale behind such a reasoning, it is stated at the cost of repetition that when there is no dispute about the opening balance and closing balance, there is no further evidence which could be produced by the assessee. This is moreso when it is the Assessing Officer who disbelieved the version of the assessee, though the assessee was maintaining that it had actually made the sales. Moreover, the Assessing Officer did not deal with the issue from this angle at all and such a reasoning adopted by the CIT(A) and ITAT was based on surmises and imagination. As a result, we answer this Reference in favour of the assessee and against the Revenue.
1000.00	
Sales	
5000.00*	
Purchases	
3000.00	
Closing stock	
2000.00	
Profit	
3000.00	
Total	
7000 00	
Total	
7000.00	

Add: Income by way of unexplained credit. It would be seen that income/profit remain""s to be the same Rs. 4000 i.e. 3000+1000 as was declared by the assessee and hence no impact on income and as such addition is wholly uncalled for and unwarranted on the facts of the case.

1000.00

*Note: Sales reduced by a sum of Rs. 1000.00 as in opinion of revenue the amount credited in books of account is not by way of sales i.e. 6000-1000 = Rs.