

A

M/S. KACHWALA GEMS, JAIPUR

v

JOINT COMMISSIONER OF INCOME TAX, JAIPUR

DECEMBER 14, 2006

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Income Tax Act, 1961:

C

s.144—Best judgment assessment—Books of accounts of assessee rejected as being defective—Tax authorities recording finding of bogus purchases—Held, such finding cannot be interfered with in instant appeal—Cogent reasons given for rejection of books of accounts—In best judgment assessment there is always a certain degree of guess work, but there is no arbitrariness on part of income tax authorities warranting interference.

D

Books of accounts of the appellant-assessee were found defective and the purchases shown were held to be bogus by the Assessing Officer. He assessed assessee's gross profit u/s 144 of Income Tax Act at the rate of 40% on the basis of comparable cases, which was reduced to 35% by Commissioner (Appeals) and further to 30% by Income Tax Appellate

E

Tribunal.

In the present appeal the assessee challenged the finding of bogus purchases and rejection of books of accounts.

Dismissing the appeal, the Court

F

HELD:1. Whether there were bogus purchases or not, is a finding of fact, and this Court cannot interfere with the same in the instant appeal. As regards the rejection of the books of accounts, cogent reasons have been given by the Income Tax Authorities for doing so, and there is no reason to take a different view. [1994-F-G]

G

2. 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 such a case and it is the assessee himself who is to blame as

H

he did not submit proper accounts. There was no arbitrariness in the instant case on the part of the Income Tax Authorities. [994-H; 995-A] A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5809 of 2006.

From the final Judgment and Order dated 25.8.2004 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. I.T.A. No. 80/2004. B

Pankaj Jain, Abhay Jain and K.C. Dua for the Appellant.

Dr. A.E. Chelliah, Arijit Prasar, B.V. Balaram Das and Venanthakumar chelliah for the Respondent.

The Judgment of the Court was delivered by C

MARKANDEY KATJU, J. Leave granted.

This appeal has been filed against the impugned judgment of the Rajasthan High Court dated 25.8.2004 in Income Tax Appeal No.80 of 2004. D

Heard learned counsel for the parties and perused the record.

The facts of the case are in a short compass. The appellant assessee deals in precious and semi precious stones. In the course of assessment the Assessing Officer noticed the following defects in the books of accounts of the assessee : E

“1. The assessee has not maintained and kept any quantitative details/ stock register for the goods traded in by the assessee.

2. There is no evidence on record or document to verify the basis of the valuation of the closing stock shown by the assessee. The assessee is not able to prepare such details even with the help of books of accounts maintained, purchase bills & Sale Invoices. F

3. Provisions of Section 145(3) are clearly attracted in this case.

4. The genuineness of purchases to the extent of Rs.42 lakhs (approx.) is not proved without any doubt. G

5. The GP rate declared by the assessee at 13.49% during the assessment year is not a match to the result declared by the itself in the previous assessment years. H

A 6. M/s. Gem Plaza, engaged in local sales of similar goods declared voluntarily rate of 35% in its assessment for the assessment year 1997098.

B 7. M/s. Dhadda Exports, another assessee dealing in same items, but doing export business declared GP rate of 43.8% (even without considering the value of export incentives) in assessment year 1997-98.”

C Thereafter the books of accounts of the assessee were rejected by the Assessing Officer and he resorted to best judgment assessment under Section 144 of the Income Tax Act. The Assessing Officer in the assessment order mentioned some comparable cases and was of the view that the case of the assessee is more or less having similar facts as that of M/s. Gem Plaza where the Gross Profit has been taken as 35.48%. The Assessing Officer estimated the Gross Profit of the assessee as 40%.

D The Assessing Officer further held that the assessee has shown bogus purchases in order to reduce the Gross Profits.

In appeal, the Commissioner of Income Tax (Appeals) upheld most of the findings of the Assessing Officer, but reduced the Gross Profit from 40% to 35%.

E In further appeal, the Tribunal had given further relief to the assessee and reduced the Gross Profit rate to 30%.

F The counsel for the assessee has submitted before us that the Income Tax Authorities wrongly held that appellant has shown bogus purchases, and the books of accounts were wrongly rejected.

G In our opinion, whether there were bogus purchases or not, is a finding of fact, and we cannot interfere with the same in this appeal. As regards the rejection of the books of accounts, cogent reasons have been given by the Income Tax Authorities for doing so, and we see no reason to take a different view.

H 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. A

R.P.

Appeal dismissed. B