

Court No. - 32

Case :- INCOME TAX APPEAL No. - 23 of 2011

Petitioner :- The Commissioner Of Income Tax Varanasi And Another

Respondent :- M/S Jananamandal Ltd.

Petitioner Counsel :- Ssc/A.N.Mahajan

Hon'ble R.K. Agrawal,J.

Hon'ble Ram Surat Ram (Maurya),J.

The present appeal has been filed under Section 260 (A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against the order dated 17.8.2010 passed by the Income Tax Appellate Tribunal, Allahabad Bench (hereinafter referred to as the 'Tribunal'). The Commissioner of Income Tax, Varanasi has proposed the following two substantial question of law said to be arising out of the order of the Tribunal: -

(1) Whether on the facts and circumstances of the case, the Tribunal is justified in law in confirming the order of the CIT (A) in deleting the disallowance of loss of Rs. 71,57,834/- without appreciating the material and evidence brought on record by the A.O.?

(2) Whether on the facts and circumstances of the case, the Tribunal is justified in law in coming to the conclusion that the A.O. while invoking the provisions of Section 145(3) of the Act has not pointed out any specific mistake in the books of account and in applying the average loss rate at 1.883% instead of loss declared at 5.29%?

Briefly stated, the facts giving rise to the present appeal are as follows: -

The appeal relates to the Assessment Year 2006-07. For the assessment year in question, the respondent assessee has filed it's return of income declaring an income of Rs. 5,43,450/-. The Assessing Officer however assessed the income

at Rs. 67,74,539/-. Out of loss of Rs. 1,11,17,730/- from the newspaper business, the Assessing Officer disallowed the loss of Rs. 71,75,834/- by limiting loss at 1.883% instead of 5.29%, declared by the assessee.

Feeling aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Varanasi who vide order dated 2.12.2009 had allowed the appeal and deleted the addition. The Commissioner of Income Tax (Appeals) has held that the Assessing Officer has not pointed out any defect in the maintenance of the books of accounts and therefore, the question of its rejection u/s 145(3) of the Act does not arise. The loss of Rs. 1,11,17,730/- is therefore liable to be accepted.

The Revenue feeling aggrieved preferred an appeal before the Tribunal. The Tribunal vide the impugned order has dismissed the appeal.

We have heard Sri Shambhu Chopra, learned Senior Standing Counsel for the Revenue.

Sri Chopra submitted that the loss declared in the newspaper business was very high and therefore, the Assessing Officer has rightly taken the average loss rate at 1.883% instead of the loss declared at 5.29%. The question of disbelieving the loss declared by the assessee would arise only if the books of accounts maintained by the assessee has been rejected in accordance with law. As already pointed out by the CIT (A) as also the Tribunal, no specific defect has been pointed out by the Assessing Officer as to why the books of accounts is liable to be rejected and therefore, the question of invoking the provision of Section 145(3) of the Act does not arise.

If the books of accounts cannot be rejected, there is no question of not accepting the loss declared by the assessee. In a business, sometimes the

business runs in profit and sometimes runs in loss. Merely because in a particular year, the loss was higher, that would not empower the Assessing Officer to reject the books of accounts, unless some specific defect is pointed out in its maintenance.

In our considered opinion, the order passed by the Tribunal does not suffer from any legal infirmity.

The appeal fails and is **dismissed**.

Order Date :- 30.1.2013

Jaideep/-