



% 20.10.2009

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Present: M. Suruchi Aggarwal, Adv. for the appellant.

+ ITA No.1070/2009

The assessee in its return for the Assessment Year 2003-04 declared his total income at Rs.21,41,987/-. After processing this income tax return for issuing notice under Section 143(1) as well as under Section 142(1) of the Income Tax Act, the Assessing Officer disallowed the expenses to the extent of Rs.26,52,691/-. These expenses were stated to have been incurred by the assessee by sending empty trucks from Delhi to Ahmedabad to get bookings from there. The Assessing Officer was of the opinion that it was improbable that a person was not making any booking from Delhi and would send empty trucks from Delhi to Ahmedabad incurring unnecessary expenses on running the trucks from Delhi to get booking from Ahmedabad. More prudent step could be to hire trucks from Ahmedabad for this purpose.

The CIT(A), in the appeal preferred by the assessee, deleted the aforesaid addition to the income. The Income Tax



Appellate Tribunal (hereinafter referred to as 'the Tribunal') has affirmed the order of the CIT(A).

On going through the order of the Tribunal, the following factual aspects emerge:

- a) The assessee is in transport business and he had furnished full details in respect of each of the truck owned by him. The books of accounts were also produced before the AO during the course of hearing and no defect was pointed out by the AO in those books of Account.
- b) The findings of the AO were presumptive when he drew the conclusion that the trucks owned by the assessee were carrying goods from Ahmedabad to Delhi were not earning any freight for goods booked at Delhi. It was found, as a fact, that the assessee had made substantial earnings by getting bookings from Ahmedabad.
- c) If the AO alleges that the assessee was not showing any freight receipt in respect of trucks being sent from Delhi to Ahmedabad, the burden is on the AO to bring on record any documentary or circumstantial evidence to prove/show that the assessee was even though booking goods from Delhi for transportation to Ahmedabad but was not showing the receipt in the



books of accounts. As pointed out above, during the course of hearing before the AO, all the books of accounts, vouchers, etc., the AO did not find anything wrong in those books of accounts, nor did he indicate any evidence to show that the assessee was booking goods from Delhi but was not showing any income thereon.

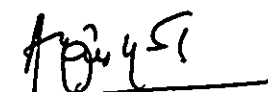
d) Though the AO had stated that the assessee had shown the expenses of petrol for sending the goods from Delhi to Ahmedabad without any business, which was not correct. As a matter of fact, it was found that the total receipt from the said trucks were to the tune of Rs.58,99,985/- and on that basis, the real loss from operating the trucks was to the extent of Rs.2,71,209/-. This shows that the assessee was booking trucks from Ahmedabad.

After taking note of the aforesaid facts, the Tribunal observed that the aggregate of such income from the assessee's own trucks allocated to Ahmedabad comes to Rs.23,81,482/-, which has been separately credited to the Profit and Loss Accounts under the head of "freight". The Tribunal observed that how to do a business is the prerogative of the assessee and the department cannot insist upon



the manner of doing the business. If the assessee finds that ... ..  
having good booking at Ahmedabad for carrying the goods to Delhi  
and having sufficient number of own vehicles, he may choose to send  
the vehicle to Ahmedabad for lifting those goods resulting in earning  
the freight.

Keeping in view the aforesaid fact, we are of the opinion  
that no question of law arises in this appeal, which is accordingly  
dismissed.

  
A.K. SIKRI, J.

  
SIDDHARTH MRIDUL, J.

October 20, 2009

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