

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Muhammad Khurshid Alam Sarkar
And
Mr. Justice Sardar Md. Rashed Jahangir

Income Tax Reference Application No. 565 of 2016

In the matter of:

Commissioner of Taxes, Taxes Zone-2, Chittagong,
Bangladesh

.... Applicant

-Versus-

Olympic Milk Food Packaging Industry Limited

.... Respondent

Mr. Pratikar Chakma, D.A.G

.... For the applicant

Mr. Sarder Jinnat Ali, Advocate

.... For the respondent

Judgment on : 24.08.2023

Sardar Md. Rashed Jahangir, J:

The instant reference application has been filed by the Commissioner of Taxes, Taxes Zone-2, Chittagong under section 160 of the Income-tax Ordinance, 1984 arising out of an order dated 24.08.2016 passed by the Taxes Appellate Tribunal, Division Bench, Chittagong (in short 'the Tribunal') in Income Tax Appeal No. 4700 of 2015-2016 (assessment year, 2013-2014) heard analogously with

the Income-tax Appeal No. 5278 of 2014-2015, formulating following question of law:

Question of Law :

- (I) Whether, on the facts and in the circumstances of the case, the Taxes Appellate Tribunal was justified in directing to reconstruct sales where direct cost & partly local sale were unverifiable?

For effective disposal of this reference application, we do not see any necessity to go into detail merit of the case in hand. The necessary facts are that the assessee submitted its return for the assessment year 2013-2014 declaring income at Tk.1,43,92,925/- (Taka one crore forty three lac ninety two thousand nine hundred twenty five). In the return, assessee disclosed its Sale at Tk.22,28,93,262/-(Taka twenty two crore twenty eight lac ninety three thousand two hundred sixty two). Deputy Commissioner of Taxes (shortly 'the DCT') concerned while working out estimating assessee's gross profit, rejected the book version of the declared Sale stating *inter alia* that some particulars of expenditure, such as, the expenses regarding raw and packing materials having not been verifiable for lack of bill-vouchers and the assessee also did not furnish the information regarding expenses of Customs Duty, C&F bill and Insurance expenses. DCT also found that the submitted Mushak 19 and the sales are not verifiable in the absence of the

name of purchasers and their addresses, which are not furnished in detail and in absence of Stock Register the use of raw materials are not verifiable. Accordingly, for the aforesaid reasons DCT rejected the book version of the Sales and thereafter proceeded to estimate the Sales stating that “ব্যবসার প্রকৃতি, গুরুত্ব, অতীত -রকর্ড এবং ব্যাংক জমার আ-লা-ক আ-লাচ্য কর ব-র্ষের জন্য মোট বিক্রি প্রাক্কলন করা হল, টাকা ৩৯,০০,০০,০০০/- (উনচল্লিশ কোটি টাকা)”. Challenging the aforementioned estimation, assessee went before the Commissioner of Taxes (Appeals) {in short ‘C.T. (Appeals)’} and the C.T. (Appeals) by his order reduced the estimated Sales at Tk.30,00,00,000/- (Taka thirty crore), finding that the declared sale of the assessee having not been tallied with Bank Deposit Statement and it is found by the DCT that assessee’s Bank deposit through Sale of goods are at Tk.22,53,69,371/- (twenty two crore fifty three lac sixty nine thousand three hundred seventy one). In further appeal (second appeal) by the concerned DCT before the Tribunal it was held as under:

“We have heard both the sides, and perused the records very carefully. As per past year records the DCT estimated the sales according to reconstructed basis. But in the appeal under consideration the DCT cannot follow the past records. So it is not sustain in the eye of law. So we vacate both the order of the DCT and the appellate authority. We direct the DCT to reconstruct the sales according to past year basis. The DCT will act accordingly.”

Challenging the order and direction of the Tribunal, the Commissioner of the concerned zone filed this instant reference application formulating aforementioned question of law.

Upon examination of the order of Tribunal, it appears that Tribunal found, upon examination of the original assessment order, the DCT estimated the Sales on the basis of the past year record (on the basis of assessment of the preceding year), upon rejecting the book version of assessee's sale. It also appears that although DCT stated in his assessment order, he proceeded to estimate the Sales on the basis of the nature and importance of assessee's business, past record and the Bank Deposit for the concern fiscal year. But at the time of working out estimated sales, actually he made his estimation out of presumption. In the case of Bangladesh Edible Oil Limited (In Income Tax Reference Application Nos. 623 of 2015, 367 of 2016 and 267 of 2017) this Court held that:

“The Assessing Officer must not act arbitrarily and must obtained materials or evidence and make his estimation or decision on the basis of said materials available before him and in doing so he enjoys a wide authorised power under Chapter-XIV of the Ordinance. It is needless to discuss here elaborately his authority and power, but he is not debarred from relying on private source of information or material in absence of better evidence and even in absence of any better

evidence he may fall back on the assessment of the last preceding year (See Gopinath -Vs- CIT, 4ITR1).”

Under the case in hand, all the criteria, shown by the DCT as the basis of estimation of Sales, are vague, save and except, ‘the Past Record’. Now the pertinent question arose, what was the past record or the preceding year’s estimation. Now here in the assessment of DCT it was disclosed, i.e. in particular, the estimated sales of the preceding year and he was under the obligation to disclose the basis and although the Tribunal on principle accepted the basis of estimation, but in absence of reference of such estimation of preceding year directed the DCT to estimate or reconstruct the sale according to his referred (took as the basis) past year record basis.

Meaning thereby, the Tribunal actually accepted the estimating spirit of DCT, but in absence of any specification directed to specify the reasons and basis of the estimation, which the DCT failed to specify in his assessment.

In the premise above, we do not find any cogent reason on the part of the Commissioner to file this reference application challenging the order of Tribunal, when the Tribunal on principle accepted the basis of estimation of the DCT. Therefore, formulating irrelevant question of law, filing this reference, resulted in wastage

of money and valuable time of this Court and therefore, this Court reminds the concerned Commissioner and other authorities to be more careful in future in filing such a meaningless reference application before this Court.

Accordingly, the reference application is rejected without any order as to cost.

The Registrar of the Supreme Court of Bangladesh is directed to take steps in view of the provisions under section 161(2) of the Income Tax Ordinance, 1984.

Muhammad Khurshid Alam Sarkar, J.

I agree.