Commissioner of Income Tax Vs Oberai Textile (P.) Ltd.

IT Case No. 67 of 1999 29 November 2004

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 29, 2004

Acts Referred:
Income Tax Act, 1961 â€" Section 143, 256

Citation: (2005) 144 TAXMAN 648

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Full Bench

Advocate: Rajesh Bindal Mahesh Grover,, for the appearing parties;

Judgement

Ajay Kumar Mittal, J.

This is a petition at the instance of the revenue u/s 256(1) of the Income Tax Act, 1961 (in short "Act") with a prayer, that Income Tax Appellate

Tribunal (Delhi Bench, Delhi) (hereinafter to be referred to as "the Tribunal") be directed to refer the following questions of law which arise out of

the Tribunal"s order dated 19-8-1997 passed in I.T.A. No. 5276/Del/1991 for the assessment year 1987-88.

1. Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in deleting the addition of Rs. 5,000 made on

account of shortage of cloth measuring 461.80 meters?

2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in deleting the addition of Rs. 1,42,421 made on account

of disallowing the checking charges by ignoring the evidence brought on record?

2. The assessee is a private limited company dealing in whole sale trading of cloth. The respondent filed its return of income on 29-6-1987

declaring an income of Rs.1,66,000. The Assessing officer completed the assessment u/s 143(3) on 29-9-1988, at an income of Rs. 2,53,620.

The assessing officer inter alia made an addition of Rs. 5,000 on account of shortage of 461.80 meters of cloth and disallowance of" Rs. 76,156

on account of expenses claimed by the assessee as cloth checking expenses. This amount was subsequently rectified and was reduced to Rs.

31,037 after taking the figure of Rs. 1,42,421 on account of cloth checking charges.

3. On appeal before the Commissioner of Income tax (Appeals) for brevity "CIT(A) by the assessee, the addition of Rs. 5,000 on account of

shortage of cloth was confirmed. The CIT(A) disallowed the total claim of Rs. 1,42,421 made by the assessee and enhanced the income by Rs.

1,11,284 (i.e., Rs.1,42,421(-) Rs. 31,037), after giving notice of enhancement to the assessee.

4. The assessee, feeling aggrieved against the order of the CIT(A), filed appeal before the Tribunal. The Tribunal allowed the claim of the assessee,

with regard to shortage of cloth and also on account of cloth checking expenses. The reference application filed by the revenue u/s 256(1) of the

Act came to be dismissed by the Tribunal.

5. The Tribunal while allowing the claim of the assessee with regard to shortage of cloth had observed that the quantity of cloth handled by the

assessee during the year exceeded 66 lakh meters, out of which only 461.80 meters was found to be short. The revenue had not set up a case that

the assessee had sold the stock outside the books of account. The Tribunal had recorded that there has been no dishonest intention on the part of

the assessee in claiming shortage of cloth measuring 461.80 meters.

6. In view of the said finding, no question of law, as claimed by (he revenue, arises for the opinion of this Court. Accordingly question No.1 is

declined.

7. Now taking up question No. 2, it needs to be mentioned that the Tribunal based its decision on following facts as noticed in its order:-

(1) Checking charges are to the account of assessee. Nothing to show that they increase cost in the hands of the purchasers.

(ii) clause 3 of commonly worded agreement with purchasers stipulates supply of grey cloth after checking by assessee at its cost. This may not be

the arrangement with other suppliers.

(iii) Stamping of name of assessee on checking charges bills only signifies receipt of the same, in office of assessee as contended by the counsel.

This is to be considered in the light of the details at pages 18 and 19 of the paper-book which give the name of the persons along with addresses

to whom cloth checking and folding charges have been paid. No attempt was made by the revenue to cross verify from the recipients.

(iv) The assessee produced bills/vouchers before us and filed photo copies of some of the purchase bills along with the checking reports. No

discrepancies were pointed out by the learned departmental Representative.

(v) The fact that most of the goods were dispatched from Bombay to Faridabad was not a relevant factor since the purchases were effected by the

assessee mostly from Bhiwandi and where the checking charges were paid as per the version of the assessee"s counsel and which is not rebutted

before us by the revenue.

(vi) The engaging of common transporters for sending goods from Bhiwandi and Bombay was also an irrelevant factor in our opinion vis-a-vis the

point at issue; and

(vii) As per the details of purchases for the month of February, 1986 at pages 26 to 37 of the compilation these contain names of the parties from

whom material was purchased along with quantity received, quantity rejected and shortages etc. This could not have been possible in case the

assessee had not carried out the process of checking etc. by engaging persons to do so.

8. The decision of the Tribunal, holding the expenses for checking of material to be genuine, is based on appreciation of evidence and no perversity

could be pointed out by the revenue in the finding recorded by the Tribunal.

9. The learned counsel for the revenue by making reference to certain material on record has made a vigorous effort to persuade this court to

arrive at a conclusion contrary to the conclusion arrived at by the Tribunal. We are afraid that it is not within the domain of this court to re-

appreciate the evidence while dealing with the petition u/s 256(2) of the Act.

10. A Division Bench of Rajasthan High Court in Jaipur Oil Products Vs. Commissioner of Income Tax, has held as under:

None appeared for the assessee. Heard learned counsel for the revenue. Considering his submissions and on a perusal of the orders of the

authorities in our view the expenditure, so incurred by the assessee, were for the purpose of business or not and whether that expenditure is

genuine or not, is basically a question of fact. A perusal of the order of the Tribunal shows that the finding of fact is riot perverse, therefore, no

interference is called for."" (p. 189)

11. The finding of fact arrived at by the Tribunal is neither erroneous nor perverse. The finding given by the Tribunal is a finding of fact. We,

therefore, decline to refer question No. 2 as well.

12. The petition is accordingly dismissed. No costs.