

(2013) 02 P&H CK 0237

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 85 of 2012 (O and M)

Commissioner of Income Tax

APPELLANT

Vs

Suresh Chander Mehra (HUF)

RESPONDENT

Date of Decision: Feb. 14, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 40A(2), 40A(2)(b)

Citation: (2013) 217 TAXMAN 107

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Denesh Goyal, for the Appellant; S.K. Mukhi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Hemant Gupta, J.

The Revenue is in appeal u/s 260A of the income tax Act, 1961 (for short "the Act") against the order dated 08.06.2011 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal") in ITA No. 355(Asr)/2010 in relation to assessment year 2004-05 whereby the Tribunal confirmed the order passed by the Commissioner of income tax (Appeals), Amritsar. The Revenue has claimed the following substantial questions of law:

- Whether the Hon"ble ITAT has erred in law in deleting the addition of Rs. 32,35,509/- on account of debit note dated 28.02.2004 issued by M/s. Essma Textile Pvt. Ltd., Amritsar, which is related to the assessee, u/s 40A(2)(b) of the Income Tax Act, 1961?
- Whether the Hon"ble ITAT has failed to appreciate that the assessee and M/s. Essma Textile Pvt. Ltd. of whom the Karta of Suresh Chander Mehra HUF (assessee) is director in his individual capacity, has adopted colorful device in revising the rate respectively to adjust the profits?

The assessee Hindu Undivided Family is a proprietor of M/s. Essma Woolen Mills. The gross profit rate declared by the assessee in the year 2002-03 was 17.89%, 16.46% in the year 2003-04 and 13.30% in the year 2004-05. During assessment proceedings, the Assessing Officer found that the assessee debited an amount of Rs. 52,35,509/- on 29.02.2004 on the basis of a debit note raised by the supplier of goods i.e. M/s. Essma Textiles Pvt. Ltd. The Assessing Officer found that such debit note has been issued for the rate difference of the goods sold by the company to the assessee after taking into account the increased price of raw material and increase in the manufacturing cost as agreed mutually. However, the learned Commissioner of income tax (Appeals), Amritsar set aside the findings recorded by the Assessing Officer and partly allowed the appeal and found that the transactions of debit note is a genuine transaction and that it does not call for addition to the extent made by the Assessing Officer. The said order has been affirmed by the Tribunal, vide order dated 08.06.2011 (A-3).

2. Learned counsel for the appellant has argued that in terms of Section 40A(2)(b) of the Act, any expenditure which is found by the authorities under the Act to be excessive or unreasonable can be disallowed as a deduction. Therefore, the findings recorded by the Assessing Officer have been interfered with without any reasonable grounds.

3. We find Section 40A(2) authorizes the authorities under the Act to disallow the deduction, if it is found that such expenditure is excessive or unreasonable. It will be a question of fact in each case whether the expenditure claimed as a deduction is excessive or unreasonable. Though the Assessing Officer has found the expenditure as excessive but not only the Commissioner of income tax (Appeals), Amritsar, but also the Tribunal did not find part of such expenditure as excessive or unreasonable. In view of the said fact, we find that the findings recorded by the Commissioner of income tax (Appeals), Amritsar and further affirmed by the Tribunal are findings of fact, which do not give rise to any substantial question of law for consideration by this Court.