(2012) 03 P&H CK 0515

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 382 of 2011

Commissioner of Income Tax (Central), Gurgaon		APPELLANT
	Vs	
Sheena Exports		RESPONDENT

Date of Decision: March 13, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 69, 80HHC, 80HHC(1A), 80HHC(3A)

Citation: (2012) 20 TAXMAN 664

Hon'ble Judges: M.M. Kumar, J; Alok Singh, J

Bench: Division Bench

Advocate: Rajesh Sethi and Rajesh Katoch, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The instant appeal filed u/s 260A of the Income Tax Act, 1961 (for brevity ''the Act'') is directed against order dated 21.04.2011 passed by the Income Tax Appellate Tribunal, Delhi Bench ''G'', New Delhi (for brevity ''the Tribunal'') passed in ITA No. 2957/D/2008 for the assessment year 2004-05. The revenue-appellant has claimed the following three substantive questions of law by taking the plea that these questions emerge from the order of the Tribunal. The questions are as under:

(i) Whether on the facts and in the circumstances of the case, the Hon''ble ITAT was right in law in upholding the order of the CIT(A), directing the Assessing Officer to allow deduction u/s 80HHC, on export incentives, received by the assessee as a supporting manufacturer in the same manner, as in the case of direct exporter, treating the supporting manufacturer at par with the direct exporter and ignoring the provisions of section 80-HHC (1A) read with section 80HHC(3A) read with clause (baa) of Explanation of section 80HHC of the Income Tax Act, 1961;

(ii) Whether on the facts and in the circumstances of the case the Hon''ble ITAT was right in law in upholding the order of the CIT(A) directing the Assessing Officer to delete the addition of Rs. 8,38,77,635/- made by the AO on account of difference in the value of stock as per stock statement submitted to the Bank and that as per the books of account; and

(iii) Whether on the facts and in the circumstances of the case, the Hon''ble ITAT was right in law in upholding the order of the CIT(A) directing the Assessing Officer to allow depreciation @ 50% on the purchase of machinery under TUF Scheme as against depreciation @ 25% allowed by the A.O.

We have heard Mr. Rajesh Sethi, learned counsel for the revenue- appellant at a considerable length on all the three questions.

2. In respect of question No. (i) it is conceded as a fact that the appeal of the revenue against the same assessee-respondent for different assessment year, namely, - CIT v. Sheena Industries Ojha Road [IT Appeal No. 916 of 2008, dated 23.11.2009]. This is stated by the revenue-appellant in the last para of the memorandum of appeal itself. Accordingly, the deduction u/s 80HHC of the Act on the export incentive received by the assessee-respondent as a supporting manufacture has been rightly availed by treating them to be at par with direct exporter.

2A. Learned counsel for the revenue states that the SLP has been filed against the aforesaid judgment. Be that as it may, this Court being the jurisdictional Court has already decided the issue against the revenue and the instant appeal will follow the suit.

3. On question No. (ii), the Assessing Officer has made an addition on the basis of difference of Rs. 8,38,77,635/- between the value of stock as on 31.3.2004 as computed on 25.3.2004. It is based on the stock statement submitted to City Bank, New Delhi and the value of closing stock as on 31.3.2004, as shown in the balance sheet. Accordingly it was added to the income of the assessee, as deemed income u/s 69 of the Act. The basic reason for the Assessing Officer to take the aforesaid view was that the assessee- respondent did not have any explanation about the source of investment in stocks of Rs. 8,38,77,635/-. When the assessee filed an appeal, the CIT(A) deleted the additions on the ground that in a case where the difference in the quantity of stock is not proved and the stock is neither pledged nor verified by the bank official then no addition could be made. It is further evident that the assessee filed various documents relating to VAT assessment, excise records including valuation of the stock and invoices and bills for valuation of the stock. The stock has been accepted by the VAT department of Government of Haryana and the same stock has been taken for the purposes of excise records. The Assessing Officer did not find any defect in the maintenance of the record which lead to the rejection of stock records or books of account. The assessee- respondent claimed that the statement submitted to the bank is merely a figure, not supported by any

quantitative details and valuation thereof. The statement given to the bank has not been affirmed on oath. The method of preparing manufacturing-cum-trading account by the Assessing Officer for 5 days namely from 26.3.2004 to 31.3.2004 was also assailed by submitting that the manufacturing expenses do not have any correlation with turn over. The credit limit availed was not only against the stock but also against book debts. It has been recorded as a fact that in the case of assessee the stock is not pledged but it was merely hypothecated. There was neither any quantity of the details given nor the stock was verified by the bank officials. It has been further held that the Assessing Officer has not been able to brought on record any evidence to show that there was difference in the quantity of stock given to the bank and the one shown in the books of account. It was on the aforesaid basis that additions were deleted. The CIT(A) after considering the aforesaid fact held that the addition could be made only if quantity of stock submitted to the bank was higher than the quantity as per books, which were pledged counted or verified by the bank officials. In this case quantitative details were not given to the bank and the stock was not pledged to the bank. It was also not verified by any bank official. Therefore, statement given to the bank could not be relied upon. The aforesaid finding has been accepted by the Tribunal in paras 9.1 to 9.9.

4. After hearing Mr. Rajesh Sethi, learned counsel for the appellant- revenue, we find that the findings have been recorded on the basis of evidence which are factual in nature. The mere fact that value furnished to the bank is without any detail or verification by the bank may not constitute the basis to make additions in face of other evidence to the contrary. There are categorical finding that the assessee-respondent had maintained broad details of the stock, its consumption, production and closing balance. The accounts have been maintained on day to day basis which have been accepted by the Excise and VAT authorities. The Assessing Officer did not point out any discrepancy in the books with reference to purchase, sale or closing stock. The findings reached by the Tribunal is that greater weight has to be attached with the regular books of account maintained than the statement given to the bank. These are pure findings of fact. No question of law much less a substantive question of law would emerge warranting admission of the appeal on the above question.

5. In respect of question No. (iii), the CIT(A) as well as the Tribunal has held that the machinery purchased by the assessee and leased under the TUF Scheme has been found to be the same and therefore higher deduction and depreciation @ 50% has been rightly allowed by the assessee- respondent. The machinery has been purchased as per TUF Scheme, making the assessee- respondent eligible for deduction at higher rate. Again the nature of stock purchasing is a finding of fact and Mr. Rajesh Sethi, learned counsel for the revenue-appellant could not advance any argument warranting admission of the appeal on the aforesaid question. As a sequel to the above discussion, this appeal fails and the same is dismissed.