

(2014) 08 DEL CK 0036**Delhi High Court****Case No:** ITA 56/2002

Dalmia Cement (Bharat) Ltd.

APPELLANT

Vs

The Commissioner of Income
Tax

RESPONDENT

Date of Decision: Aug. 13, 2014**Acts Referred:**

- Income Tax Act, 1961 - Section 131, 143, 147, 148

Hon'ble Judges: V. Kameswar Rao, J; Sanjiv Khanna, J**Bench:** Division Bench**Advocate:** Simran Mehta, Advocate for the Appellant; Kamal Sawhney, Sr. Standing Counsel, Advocate for the Respondent**Judgement**

Sanjiv Khanna, J.

This appeal by the assessee-Dalmia Cement (Bharat) Ltd. relates to assessment year 1982-83 and was admitted to hearing vide order dated 15th July, 2002, on the following substantial question of law:-

"Whether the Tribunal was justified in sustaining the addition of Rs.1,99,000/- and Rs.49,750/-, respectively made by the Assessing Officer and the CIT (Appeals)"

2. The assessment for the assessment year 1982-83 was completed u/s 143 of the Income Tax Act, 1961 (Act, for short) vide order dated 29th March, 1985. Subsequently, it was reopened u/s 148 read with Section 147 of the Act and return declaring "nil income was filed on 16th April, 1993. The reopening was necessitated in view of the appellate orders passed in the proceedings for the assessment year 1985-86. We shall refer to the said order subsequently.

3. The appellant-assessee, as an exporter, was issued import licence, dated 12th March, 1981, bearing No.P/W/2940019/C/XX/781/D/180. As per the terms, the appellant- assessee could import goods valued at Rs. 5,00,000/- under the licence or could have assigned the licence to an actual user of the imported goods. In the

latter case, the appellant-assessee was required to ensure complete documentation and file papers before the Chief Controller of Imports and Exports. The appellant-assessee had claimed that the aforesaid licence of Rs.5,00,000/- was assigned to M/s. United Engineers & Traders (Regd.), Ghaziabad (for short, "UET"), a partnership firm, under an agreement dated 19th February, 1981, on receipt of premium of Rs.37,500/-. It is an admitted and accepted case that the appellant-assessee could not file necessary documentation for utilization before the Chief Controller of Imports and Exports. Believing that the appellant-assessee had sold the imported goods in the open market and earned unaccounted income, the assessments for the year in question were reopened. The Assessing Officer made an addition of Rs.1,99,000/- and Rs. 49,750/-, observing that the assessee had not been able to show that the goods in question were actually imported by UET and were utilised by them. The Assessing Officer in this regard relied upon documents as well as the statement of Joginder Singh, a partner of UET. He also relied upon the statement of G. Kapoor, a partner of M/s. H.M. Doyal & Co., who had purportedly acted as an agent of UET.

4. The aforesaid addition was confirmed by the Commissioner of Income Tax (Appeals) and by the Tribunal in the impugned order dated 24th August, 2001.

5. Learned counsel for the appellant-assessee has submitted that the findings recorded by the authorities and the Tribunal are perverse and contrary to the material on record. He has highlighted that the Assessing Officer himself had accepted genuineness of all the invoices under the same import licence. Our attention was drawn to the documents placed on record, which include a letter dated 19th February, 1981, written by the appellant-assessee to UET and states that the appellant assessee would issue a letter of authority in favour of UET and all costs, charges and expenses, including charges for opening of the letter of credit and all other bank charges, would be borne and paid by UET; a letter dated 19th February, 1981 written by UET by which they had made part payment to the appellant-assessee and required them to issue a letter of authority in favour of M/s. H.M. Doyal & Co; another letter dated 20th February, 1981 was written by UET stating that they were making payment of Rs.15,000/- and a letter of authority be issued in favour of M/s. H.M. Doyal & Co.; and a copy of letter of authority dated 25th March, 1981. Our attention was drawn to the invoice dated 3rd June, 1981 for the import of consignment under the aforesaid import licence issued by a company in Sweden in favour of M/s. H.M. Doyal & Co., the bill of lading issued in the name of the United Bank of India and M/s. H.M. Doyal & Co., which was also dated 3rd June, 1981. Reference was made to the invoice which was accepted by the Assessing Officer and was dated 3rd July, 1981 in the name of M/s. H.M. Doyal & Co. and the bill of lading in respect of the said invoice, also dated 3rd July, 1981.

6. The invoice dated 3rd July, 1981, and import thereon, which has been accepted by the Assessing Officer, refers to the same import licence, but this would not show

that the import made under the invoice in question dated 3rd June, 1981 was genuine and the material imported under the invoice dated 3rd June, 1981 was not sold in the open market. In respect of the invoice dated 3rd July, 1981, the Assessing Officer did not make any addition after noticing that there was a letter from Asia Transport Company, addressed to UET that categorically stated that the imported goods had been cleared through them and had been transported to Delhi. They had forwarded a lorry receipt after endorsement in favour of UET. It was stated by Asia Transport Company that goods had been imported by UET and had been sent by them to the said party as clearing and forwarding agents. It is apparent that Asia Transport Company had supported the claim of the appellant-assessee in respect of the said invoice and the Assessing Officer gave benefit of doubt in respect of the said consignment. As recorded below, we have reservations on this finding and cannot regard and treat the said finding as conclusive and binding for the consignment covered under invoice dated 3rd June, 1981. Moreover the facts are distinguishable as for the invoice dated 3rd June, 1981, there was no letter of the clearing agent. The imported consignment covered by the invoice dated 3rd June, 1981 consisted of 12 packages. The Assessing Officer has specifically noted and recorded that UET in their affidavit dated 15th February, 1985 had stated that they had not imported the goods in question under the said invoice. In fact, they had stated that they had not imported the goods under any of the two invoices. In categorical terms, they had denied any import whatsoever. The assessment order further records that during the course of proceedings for the assessment year 1985-86, statement on oath was made by Joginder Singh that UET had not affected any import under the aforementioned import licence. Commissioner of Income Tax (Appeals) went into details, as before him the assessee had relied upon the letter of credit as well as the statement of accounts, which was obtained by the Assessing Officer from M/s. H.M. Doyal & Co. in support of his contention that the transaction covered by invoice dated 3rd June, 1986 was also genuine and no addition was justified. Commissioner of Income Tax (Appeals) noticed that the statement of accounts furnished by M/s. H.M. Doyal & Co. started from 10th September, 1981 and the transaction in question or the invoice in question was dated 3rd June, 1981. Bill of lading was dated 3rd June, 1981 and the letter of credit, which was opened with United Bank of India was also dated 3rd June, 1981. The statement of accounts, furnished by M/s. H.M. Doyal & Co. did not show any opening balance as on 10th September, 1981. Thus the statement of account furnished by M/s. H.M Doyal & Co. would not help decide the issue in favour of the appellant-assessee or exonerate them. The Commissioner of Income Tax (Appeals) referred to the statement of G. Kapoor dated 18th March, 1988 that the endorsement on the letter of credit had been done by his uncle, who was a partner in the firm, M/s. H.M. Doyal & Co.; G. Kapoor had denied any business relationship or connection prior or later to the said transaction. In his statement, G. Kapoor had stated that money was received by demand draft, which was brought by Sunderlal and Mool Chand Gupta. Commissioner of Income Tax (Appeals) made specific reference to the statement of

Joginder Singh dated 17th March, 1988 in which he had denied having imported any goods or making any payment. Joginder Singh had stated that blank letter heads were signed by him as actual user of the goods and this was done on consideration of a 2% commission. He denied any business dealing with M/s. H.M. Doyal & Co. Commissioner of Income Tax (Appeals) emphasised that the appellant- assessee had not furnished utilisation of the licence on behalf of the UET in the statement submitted to the Chief Controller of Imports and Exports. Commissioner of Income Tax (Appeals) observed that the bill of lading for the import had been endorsed by the appellant- assessee in favour of UET. This indicated and showed that they were aware of the import in question and plea to the contrary should not be accepted. He also recorded a finding that the appellant-assessee had not been able to show that in which account of Rs.37,500/- purportedly received by them was credited and the appellant-assessee had pleaded inability to produce the said accounts on the ground that the books were not traceable.

7. The appeal filed by the appellant-assessee was dismissed by the Tribunal primarily relying upon the findings recorded by the Commissioner of Income Tax (Appeals) and also noticing that Joginder Singh had clearly denied having made any import under the licence in question. Specific reference was made to the affidavit filed by Joginder Singh.

8. Learned counsel for the appellant-assessee has submitted that the statement of Joginder Singh, his affidavit and the statement of G. Kapoor of M/s. H.M. Doyal & Co. should not have been taken into consideration and should have been ignored as the appellant-assessee was not given any opportunity to cross-examine and was not confronted with the aforesaid statements/affidavit. Impugned order passed by the Tribunal does not reveal that any such contention was raised. Appellant-assessee has filed grounds of appeal raised before the Tribunal, but we find that no such assertion or contention was raised therein. In fact, it was pleaded that the statement and affidavit of Joginder Singh should not be accepted because there were documents supporting import of goods against the invoice dated 3rd July, 1981 and payments made to M/s. H.M. Doyal & Co. by UET, by way of demand drafts, were duly recorded in the books of accounts of M/s. H.M. Doyal & Co. for the period between 10th September, 1981 onwards. Further, in respect of the invoice dated 3rd July, 1981, M/s. Asia Transport Company had duly confirmed the import of goods.

9. As noticed above, in respect of the consignment covered by the second invoice dated 3rd July, 1981, no addition has been made by the Assessing Officer primarily for the reason that M/s. Asia Transport Company had confirmed having sent the lorry receipt for transportation of goods along with their bill to UET. In these circumstances, the appellant-assessee was given benefit and no addition was made in respect of this invoice. However, in regard the invoice dated 3rd June, 1981, there was no evidence or material whatsoever. It is noticeable that the statement of accounts furnished by M/s. H.M. Doyal & Co. did not show any opening balance as

on 10th September, 1981. G. Kapoor, in his statement recorded on oath u/s 131 of the Act, had stated that they were purely a trading concern and had dealings with four companies. They used to make local purchases at a petty scale. They were not importing goods and the firm, i.e. M/s. H.M. Doyal & Co., had not been dealing in purchase or sale of import licences. G. Kapoor categorically denied having made any import under the licence in question. However, he has accepted that the letter of credit facility was opened by the firm with Union Bank of India and payments were made by them for the release of documents. He accepted that they had acted as an agent of UET, but the transaction was through Mool Chand Gupta, who was known to his uncle's friend, Sardari Lal Talwar, but he was not able to tell or state to whom the documents were handed for imported goods. The said Sardari Lal Talwar had expired. G. Kapoor could not answer the question as to how he had endorsed documents in favour of Dalmia International, i.e. the assessee. He denied having any business connection or relations with UET prior or later to this transaction. Joginder Singh, in his statement recorded u/s 131 of the Act, had stated that they were manufacturing cranes and power winches and had a turnover of Rs.1.5 lacs to Rs. 2 lacs. Sometimes, they purchased imported material for their manufacturing operations. They had procured import licences upto 1970-71 but thereafter no licences had been procured by them. Their firm had not purchased any import licence after 1970-71 up till 1982-83, but some persons had approached him for signatures, as actual user for importing goods under the licences, and he had received, commission @ 2% in cash on the goods imported, but he had never used the said goods and did not even know what goods were imported. Letters, purportedly written by UET to the appellant- assessee, were shown and it was stated by Joginder Singh that he had signed blank letter heads of the firm and given it to different parties, who had approached him to sign as actual user of the goods imported. He denied having known any concern like "Dalmia International" or "Dalmia Cement (Bharat) Ltd". He also denied having sent the demand draft of Rs.15,000/- to Dalmia International. He further denied having dealings with M/s H.M. Doyal & Co. during 1981-82.

10. The main focus and contention of the learned counsel for the appellant-assessee is that once invoice dated 3rd July, 1981 was accepted and no addition was made, then no addition was justified in respect of the invoice dated 3rd June, 1981. We have considered the said contention and examined the facts and material, but do not find any merit in the same. In fact, we feel that the Assessing Officer was rather liberal in accepting the case of the appellant-assessee in respect of the invoice dated 3rd July, 1981 and this cannot be a ground or justification for not making any addition in respect of the invoice dated 3rd June, 1981. The conduct of M/s. H.M. Doyal & Co. relied upon by the counsel for appellant assessee does not inspire confidence or absolve them. In fact, statement of G. Kapoor goes against the appellant-assessee. We do not, in these circumstances, think that the order of the Tribunal requires interference on the ground that there was no evidence or

material, or that the order is perverse.

11. The question of law is accordingly answered against the appellant-assessee and in favour of the respondent-Revenue. The appeal is dismissed. There will be no order as to costs.