(2014) 04 CAL CK 0124

Calcutta High Court

Case No: ITAT No. 218 of 2013 and G.A. No. 3523 of 2013

Commissioner of Income Tax	APPELLANT
Vs	
Green Ply Industries Ltd.	RESPONDENT

Date of Decision: April 8, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 147, 148, 32

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J

Bench: Division Bench

Advocate: P.K. Bhowmick, Advocate for the Appellant; J.P. Khaitan, Sr. Adv., C.S. Das and Siddhartha Das, Advocate for the Respondent

Judgement

1. The subject matter of challenge both before the learned Tribunal and the CIT (Appeal) was the assessment passed u/s 147/143(3) of the Income Tax Act by which the Assessing Officer had made substantial additions. One of the contentions raised by the assessee was that the reopening was sought to be effected after expiry of a period of four years and, therefore, the Assessing Officer was obliged to establish that the assessee had omitted to disclose fully and truly all material facts necessary for assessment. Both the learned Tribunal and the CIT (Appeal) disposed of the matter on the basis that there was no omission on the part of the assessee to fully and truly disclose all material facts. Aggrieved by the order of the learned Tribunal, the revenue has come up in appeal.

2. Mr. Bhowmick, learned Advocate appearing for the revenue-appellant contended that the assessee had claimed deduction of a sum of Rs. 2,06,47,310/- towards "written-off amount of intangible assets". He contended that with regard to an intangible asset, the assessee was not entitled to claim any deduction except u/s 32 of the Income Tax Act. The deduction claimed and obtained by the assessee was thus contrary to law and, therefore, the protective umbrella of four years contained in section 148 of the Income Tax Act was removed. He similarly contented that with regard to the other addition, there was another failure on the part of the assessee.

3. Mr. Khaitan, learned senior advocate appearing for the assessee-respondent has disputed the submission made by Mr. Bhowmick. He wanted to rely upon the documents including accounts in order to show that there was a full and frank disclosure made by the assessee. He, however, did not dispute the fact that neither the CIT (Appeal) nor the Tribunal examined the documents including the accounts sought to be relied upon before us nor did they examine as to whether the assessee had made a frank and fair disclosure as contended by Mr. Khaitan.

4. Time and again we have been coming across cases, disposed of merely on technical issues without touching the merits or the related issues of fact. This practice is merely adding to the multiplicity of judicial proceedings. The appellate authority should examine and express its views both with regard to the technical question and related mixed questions of fact and law or pure questions of fact except in those cases where the appeal can be disposed of merely on the jurisdictional issue. This would reduce multiplicity of judicial proceedings and shall also save judicial time. Consequently, less cost shall be involved in the litigation. A remand in this case would not have been necessary if the question had been decided taking into consideration the factual issues now sought to be urged.

5. Considering the facts and circumstances of the case, the judgment under challenge and the judgment passed by the CIT (Appeal) are both set aside. The matter is remanded to the CIT (Appeal) for reconsideration. All questions are kept open. The CIT (Appeal) shall try the matter in accordance with law.

6. Both the appeal and the application are, thus, disposed of.