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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 554/2012

CIT

..... Appellant

Through : Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

M/S. PUNJAB STAINLESS STEEL INDUSTRIES Respondent

Through : Sh. Satyen Sethi and Sh. Arta Trana
Panda, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% **01.11.2012**

The Revenue is in appeal against an order of the ITAT dated 28.02.2012 in ITA 1910/Del/2006. The question of law urged is the correctness of the ITAT's order *vis-a-vis* the allowance permitted to the respondent/assessee, for the claim of expenditure on account of polishing charges paid to artisans.

The relevant facts are that for the Assessment Year 2002-03, the assessee's return as considered under Section 143(3) of the Act. The assessee derived income from the business of manufacturing and export of SS, Utensils, cutlery etc. It claimed expenditure of Rs. 2,91,85,982/- on account of polishing jobwork charges for the year in question. In support of this, it has provided list of 369 parties/artisans with their addresses, to whom such polishing charges had been paid. At the same time, 101 of the said 369 persons had confirmed that the said payments were received. The AO held that polishing charges were paid to the parties of which confirmations had been obtained and filed, and that in respect of others, the report received was that no such parties existed. The AO, therefore,

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allowed 50% of claimed expenses and disallowed Rs.1,47,76,058/- by the order dated 31.03.2005. The assessee appealed to the Commissioner. This claim towards the expenditure was allowed in part, by the Commissioner of Income Tax (Appeals) as follows:

"6.7 I have carefully considered the submissions made by the counsel of the appellant. From the rival arguments, both by the revenue and the appellant, one thing certainly emerges that the entire claim made by the appellant on account of polishing expenses did not stand the test of full materiality because the AO's enquiries revealed that bulk of the parties undertaking polishing jobs were not available at the declared addresses. It was an acceptable proposition if some of the panics could not be found as per the argument of the appellant that because of humble means, they had out of compulsion shifted to new places and could not stick to the same residence for a longer time. But the fact has been proved to be otherwise in as much as most of these workers were not traceable at the declared addresses.

6.8 However, I am in agreement with the argument of the appellant that polishing jobs were part and parcel of the manufacturing operation of steel utensils and were undertaken by the appellant. So, the entire claim of the appellant cannot be disbelieved for absence of the concerned persons at the declared addresses because the appellant had discharged the primary burden cast on him to make available the identity of such polish workers with addresses and the evidences regarding payments on account of polish expenses by way of signed vouchers.

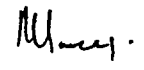
6.9 Further it is noticed that the AO at the fag end of the assessment proceeding informed the appellant vide her letter dated 28.03.2005 that the most of the parties were not found at the declared addresses – and the appellant's explanation was sought on the very next date, i.e. on 29.03.2005. The appellant entrusted the job to a junior employee to contact the available heads of the sub groups of the polishers and to obtain the confirmations from them. But since the available time was hardly 12 days, the appellant could not produce the confirmation in respect of all the polish workers. It has been also argued that the inspector's report on which the AO has placed reliance was never made available to the appellant and the appellant could not get any opportunity to rebut the findings made in such report. In any case, in my view it was impossible on the part of the appellant to make enquiries about 200 strong parties at far flung places in two days time allowed by the AO."

The Commissioner (Appeals) restricted the disallowance to 15% of the claim of

expenses which worked-out to Rs.43,77,897/-. The ITAT rejected the appeals of the Revenue as well as the assessee. It was noticed that such disallowance had been upheld in previous orders for other years and the Tribunal also quoted its order dated 26.11.2009, where such 15% disallowance had been upheld. It is contended by the Revenue that the approach of the Tribunal is in serious error of law since it did not take into consideration the fact that the AO had the benefit of perusing the materials as to the genuineness of the claims especially with regard to the genuineness of the artisans and the payments made to them. Without proper discussion, CIT(Appeal) deemed it proper to restrict the disallowance originally made, to the extent of 50%, to 15%. This unreasoned order, the Revenue contends, was erroneously upheld by the Tribunal. It is also stated that similar claims for expenditure for previous year that was disallowed, had been admitted in other pending matters before the Court.

We have considered the arguments and the materials on record. It is evident from the previous discussion that the CIT (Appeals) had taken into consideration materials which the AO had also the benefit of, including the Inspector's report vis-à-vis existence of the artisans. The approach of CIT (Appeal) was to partly give the benefit of doubt but at the same time restrict the disallowance and sanction a disallowance to the extent of 15%. This is premised on the fact that the activity in question, i.e. polishing of utensils did take place. That the disallowance in such circumstances should be confined to 15% or 50% can hardly be a question of law which should engage attention of the Court, under Section 260A of the Income Tax Act. The appeal is bereft of merit; it is accordingly dismissed.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

NOVEMBER 01, 2012
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