

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 248 of 2012.

Date of Decision : December 24th, 2014.

The Commissioner of Income Tax-II, Amritsar ...Appellant

Versus

M/s Indo German Fabs ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Denesh Goyal, Advocate for the appellant.

Ms. Radhika Suri, Senior Advocate with
Ms. Rinku Dahiya, Advocate for the respondent.

Rajive Bhalla, J.

The revenue is before us challenging order dated 03.04.2012 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'), Amritsar Bench, Amritsar allowing an appeal filed by the assessee and as a consequence, setting-aside order dated 29.03.2010 passed by the Commissioner of Income Tax-II, Amritsar.

Counsel for the revenue submits that findings recorded by the Tribunal are not only perverse and arbitrary but devoid of any reasons much less did the Tribunal have jurisdiction to appraise facts and record an opinion that the Commissioner could not have assumed jurisdiction under Section 263 of the Income Tax Act (hereinafter referred to as 'the Act'). Counsel for the revenue further submits that a perusal of the record reveals that even if it is accepted that the Commissioner of Income Tax committed an error in tabulating the number of blankets, the huge difference in valuation detected by the

CIT is sufficient to infer prejudice to the revenue and as a consequence an erroneous consideration by the Assessing Officer, conferring jurisdiction on the Commissioner of Income Tax to pass an order under Section 263 of the Income Tax Act. Counsel for the revenue also submits that the Tribunal has set-aside the order passed by the Commissioner of Income Tax (Appeals) by referring to certain documents produced by the assessee without affording any opportunity to the revenue to rebut these documents or to furnish an explanation for the alleged error, pointed out by the Tribunal and, therefore, the following substantial question of law arises for consideration :

“Whether on the basis of facts and circumstances of the case, the ITAT was right in law in cancelling the order of CIT u/s. 263 of the Income Tax Act, 1961 inspite of the fact that the A.O's order was incorrect and prejudicial to the interest of revenue as the A.O. had erroneously made an estimated addition of Rs. 29,80,453/- by adopting G.P. rate of 23% instead of making an addition of Rs. 56,29,470/- which was to be made on the basis of survey record and production Records/document available with the Department?”

Counsel for the assessee submits that admittedly, the Assessing Officer, rejected account books, applied a gross profit rate of 23% and on the basis of the record pertaining to finished, unfinished goods (different types of blankets) and raw material added ₹29,80,453/- to the income of the assessee. The assessee filed an appeal against this order but in the meanwhile, the Commissioner of Income Tax served a show cause notice upon the assessee proposing to revise the assessment by referring to facts that are not inferable from any document on record much less the assessee's documents and made an addition of ₹56,29,470/- to the income of the assessee. The Tribunal has after referring to the inventory as on 22.12.2004 which

includes finished and unfinished goods as well as raw material, held that as these documents were already before the Assessing Officer who after examining the documents added ₹29,80,453/- to the income of the assessee, the case of the revenue at its best was a case of under assessment or under valuation of goods and not a case that would require exercise of jurisdiction under Section 263 of the Act. The Tribunal has also held as a matter of fact that the finished blankets tabulated by the CIT are incorrect.

We have heard counsel for the parties and perused the impugned order as well as order passed by the Commissioner of Income Tax-II, Amritsar.

Admittedly the assessee's account books were rejected and the assessee was assessed at a gross rate of 23% instead of 19.74%. The assessee admittedly filed an appeal which was pending adjudication. During pendency of the appeal, the CIT served a show cause notice upon the petitioner by referring to the following facts :-

"I have examined the case records in your case for the Assessment year 2005-06. A survey u/s 133A was conducted in your case on 22.12.2004. Subsequently, assessment u/s 143(3) was completed vide order dated 19.12.2007, by rejecting the books of account and applying the G.P. rate of 27% as against that shown by you at 19.74% and an addition of ₹29,80,453/- was made.

While the above action of the Assessing Officer was examined it was found to be erroneous for the following reasons. While the assessee could not prove genuineness of its trading A/c, the correct course for the A.O. was to prepare separate correct course for the A.O. was to prepare separate correct quantitative details for the period upto the date of survey and for remaining part of the financial after the date of survey. When this exercise is done, the following portion emerges from "the figures of monthly consumption of raw material, production of finished goods and sales wherein available on record.

<i>Items</i>	<i>Tally as 22.12.04</i>	<i>Production in Jan. to March, 2005</i>	<i>Sales in Jan.-March, 2005</i>	<i>Closing stock</i>	<i>Closing Stock as disclosed</i>	<i>Difference in closing stock</i>
Double blankets	9204	7224	3020	13408	6004	7404
Single blankets	12448	6899	6859	12448	7236	5212
Baby blankets	4035	676	279	4432	4091	341

The aforesaid analysis shows that the quantity of closing stock is short by the following value:-

<i>Item</i>	<i>Number</i>	<i>Average Price (Rs.)</i>	<i>Value (Rs.)</i>
Double blankets	7404	500	3702000
Single blankets	5212	360	1876320
Baby blankets	341	150	51150

This analysis which shows that the stock has been shown short by a value of ₹56,29,470/-. Therefore, instead of applying GP rate on estimate basis, the A.O. should have quantified the amount duly supported by the aforesaid analysis, thereby calling for an addition of ₹56,29,470/- instead of ₹29,80,453/-.

Thus the closing stock is, therefore, short by ₹56,29,470/-. It, therefore, is apparent that the above stock has been produced using the raw material and incurring other expenses which have already been debited to P & L account and, therefore, the addition should have been at ₹56,29,470/- instead of ₹29,80,453/- made by the A.O. The order of the A.O. therefore, is erroneous as well as prejudicial to the interest of revenue on this account. I, therefore, propose to take action u/s 263 of the Income Tax Act."

The assessee filed a reply pointing out that the figure with respect to the number of finished blankets is incorrect as the record reveals 13822 pieces instead of 25687 pieces, calculated by the CIT. The Commissioner of Income Tax, after appraising the documents and the reply, formed an opinion that as the assessee has concealed true income, the assessment order is erroneous and prejudicial to the interest of the revenue and, therefore, added ₹56,29,470/- to the

income of the assessee. The ITAT has set-aside the order by holding as follows :-

“6. We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that in the show cause notice, the Ld. CIT has not included the production, sales etc. for the period 23.12.2004 to 31.12.2004. Also from the copy of the order sheet available at PB 16 to 20 and the various explanation given by the assessee vide different letters available at PB 27 to 29 and the quantitative tally and pre-survey and post survey profit & loss account and the summary of purchase and production available at PB 30 to 32, the AO had done extensive inquiry of the production, sale etc. and accordingly addition of ₹29,80,453/- has been made to the income of the assessee. The details of unfinished goods found at the time of survey with regard to 12165 pcs. Available at PB 12 and that of the finished goods available at PB 8 & 9 have already been taken into consideration in the production tally by the AO available at PB 30 to 32. Therefore, the Ld. CIT on perusal of records may be of the opinion that the addition made by the AO is on the lower side and the Id. CIT may be of the opinion that income could be estimated at a higher amount, then such opinion cannot be subject matter of section 263 of the Act and the Ld. CIT is not vested with the power to re-examine the amount and determine the figure at higher figure. In the present case, when the AO in his quasi-judicial power had conducted extensive inquiry and had made the addition, then the Ld. CIT(A) is not empowered to re-examine the matter, which is not erroneous and prejudicial to the interest of the revenue. In our opinion, no fresh inquiry can be made at the instance of the Id. CIT unless earlier decision of the AO is erroneous and prejudicial to the interest of the revenue. The Ld. CIT cannot put his words in the mouth of the A.O. Therefore, in the facts and circumstances, the order of the A.O. Cannot be said to be erroneous and prejudicial to the interest of the revenue. Therefore, there is no question of revision of the order of

the A.O. In the present case. Thus, in view of the facts and circumstances of the case discussed hereinabove, we direct to cancel the order of the Ld. CIT passed u/s 263 of the Act and allow all the grounds of appeal of the assessee."

A due consideration of submissions by counsel for the parties and perusal of the show cause notice, particularly the chart reproduced therein and order passed by the CIT and the ITAT in our considered opinion leave no ambiguity, that the CIT had no jurisdiction to exercise power under Section 263 of the Act and re-assess an already concluded assessment. Section 263 of the Act confers power to examine an assessment order so as to ascertain whether it is erroneous and prejudicial to the interest of the revenue but does not confer jurisdiction upon the CIT to substitute his opinion for the opinion of the Assessing Officer. The words prejudicial and erroneous have to be read in conjunction and therefore, it is not each and every error in an assessment that invites exercise of powers under Section 263 of the Act, but only orders that are erroneous and prejudicial to the interest of the revenue. A perusal of the order passed by the CIT reveals that its suffers from an error relating to computation of the number of finished blankets. The CIT inferred that the assessment order is erroneous and prejudicial to the interest of the revenue by holding that the assessee has manufactured 25687 blankets. A perusal of the inventory regarding finished goods reveals that finished blankets are 13822 pieces, but while arriving at the figure of 25687 of finished blankets, the CIT included unfinished goods and raw material. We have also perused a copy of the paper book filed before the ITAT which contains the inventory of finished, unfinished goods and raw material that prove the factual error committed by the CIT. The Tribunal has after referring to these errors rightly recorded a finding that at its best the case

against the assessee was one short assessment which had already been taken care of by the Assessing Officer by adding a substantial amount to the income of the assessee.

We find no reason whether in fact or law to interfere with the opinion recorded by the Tribunal and consequently affirm the impugned order, answer the question of law against the revenue and dismiss the appeal.

(RAJIVE BHALLA)
JUDGE

(B.S. WALIA)
JUDGE

December 24th, 2014.
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