

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 30.01.2015

I.T.A.No.68 of 2001

Commissioner of Income Tax (Central), Ludhiana ...Appellant

Versus

M/s Highway Cycle Industries Ltd., Ludhiana ...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Ms. Savita Saxena, Advocate, for the appellant.

Mr. Aalok Mittal, Advocate, for the respondent.

HEMANT GUPTA, J. (ORAL)

The Revenue is in appeal under Section 260 A of the Income Tax Act, 1961 (for short 'the Act') aggrieved against the order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') on 30.06.2000 relating to the assessment year 1989-90. The Revenue - appellant has raised the following substantial questions of law:

- (i) Whether on facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing deduction under Section 80M on gross amount of dividend received by the Assessee ignoring express provisions of Section 80AA of the Income Tax Act, 1961?
- (ii) Whether on facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income Tax (Appeals) in deleting the addition of Rs.18,88,759/- made on account of Closing Stock of stores, spare parts and tools etc.?

The respondent – assessee filed its return declaring an income of Rs.1,06,98,540/- for the assessment year 1989-90. The Assessing Officer disallowed the deduction of Rs.10,19,200/- under Section 80M of the Act claimed by the assessee and also estimated the Closing Stock as Rs.20,00,000/- after giving a benefit of Closing Stock of Rs.1,11,741/- in the assessment year 1983-84, made an addition of Rs.18,88,259/-.

Aggrieved against the order of the Assessing Officer, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) partly allowed the appeal setting aside the addition made by the Assessing Officer under Section 80-M of the Act as well as the addition made by the Assessing Officer in respect of the Closing Stock. The Commissioner of Income Tax (Appeals) found that the Assessing Officer while completing assessment for the assessment year 1983-84 accepted the assessee's method of accounting holding that the valuation of the closing stock on petty items used in the manufacturing process would be nearly equal to the opening stock. An amount equivalent to the opening stock was added back in the assessment year 1983-84 without any adjustment in the succeeding assessment year. The assessment for the assessment years 1985-86, 1986-87, 1987-88 & 1988-89 were also finalized on the basis of such method. The Commissioner of Income Tax (Appeals) found that rule of judicial precedents is a very salutary and is aimed at achieving finality and homogeneity of judgments.

In further appeal before the Tribunal, the findings recorded by the Commissioner of Income Tax (Appeals) were maintained setting aside the addition made by the Assessing Officer under Section 80M of the Act and in respect of opening and closing stock. It was observed as under:

“11.3 We have carefully considered the rival submissions and have perused order of tax authorities. We have also seen the case law relied upon by learned counsel. We feel that the issue is covered in favour of

the Assessee by the decision reported in 55 ITD 465 (supra). It is also observed that Id. CIT (A) has also relied on order of the Tribunal. Ld. DR has not controverted the said decisions either on facts or on law. In the circumstances, we see no reason to interfere with order of CIT (A).”

Before this Court, in respect of first substantial question of law, learned counsel for the Revenue has referred to the judgment of the Hon’ble Supreme Court in Distributors (Baroda) P. Ltd. Vs. Union of India & others (1985) 155 ITR 120, wherein it has been held that the deduction under Section 80M of the Act is with reference to the net income rather than the gross dividend income.

In view of the said law, in respect of the first substantial question of law, it is held that the decision of the Tribunal in allowing the deduction under Section 80M is contrary to Distributors (Baroda) P. Ltd.’s case (supra). Thus, the order of the Tribunal is set aside and that of the Assessing Officer is restored.

However, in respect of second substantial question of law, it has been found, as a matter of fact, that the assessee is manufacturer of 25000 pieces of free-wheels of different sizes and different design every day. The aluminum castings were also manufactured for automobile factories. The Assessing Officer has taken the opening and closing stock in the assessment year 1983-84 as the same for the reason that the list of all the items other than petty items runs into about 50 full-scape typed pages. Therefore, in respect of petty items, the Assessing Officer has given benefit of not maintaining the accounts and to treat the opening and closing stocks almost the same.

Learned counsel for the Revenue relies upon the Hon’ble Supreme Court judgment in Commissioner of Income Tax Vs. British Paints India Ltd. 1991 (188) ITR 44 to contend that the accounting method required to be adopted by an assessee should disclose true picture of profits and gains and in the

absence of such method, the Assessing Officer is entitled to adopt appropriate computation to determine true income.

We find that the rule of thumb applied by the assessee to disclose the opening and closing stocks without any co-relation with the production or turnover cannot be sustained. The justification sought to be given by the assessee that the accounts are voluminous in respect of all other items, therefore, petty items have been ignored cannot be accepted. One can understand that if the assessee has taken a stand to have certain percentage of production as opening and closing stocks of the petty items, but to assume that the opening and closing stock would be same is without any correlation to the turnover or the production. It gives flexibility to the assessee to manage stocks affecting the income. Such method of accounting runs counter to the judgment of the Hon'ble Supreme Court in British Paints India Ltd.'s case (supra).

At this stage, Mr. Mittal argued that the finding of the Assessing Officer to take the closing stock of the assessment year 1983-84 and made addition on the basis of such stock is not sustainable. At best, even if the addition is to be made, it could be on the basis of closing stock of the previous year i.e. 1988-89. Such argument seems to be attractive, but cannot be accepted at this stage. It has come on record from the assessment year 1983-84 till the assessment year 1988-89, the assessee made to believe that stocks purchased by him stands consumed by the end of the year. Such accounting method even in respect of petty items cannot be said to be an accepted accounting procedure, the notice of such method could be taken by the Assessing Officer while making assessment. We find that the finding of the Commissioner of Income Tax (Appeals) as well as of the Tribunal is not based upon sound reasoning. The reason given is on the basis of the finality of the assessment proceedings in the previous years. The opening and the closing stocks have to be certain and

cannot be left to the rule of thumb, as adopted by the assessee in the present case.

Mr. Mittal has also relied upon a judgment of this Court in ITA No.162 of 2008 titled 'Commissioner of Income Tax, Ludhiana-II Vs. M/s Rockman Cycle Ind. Ltd., Ludhiana' decided on 19.09.2008, wherein the appeal of the Revenue in respect of deleting the addition on account of consumable stores and sundry repair unutilized during the financial year was dismissed for the reason that the Revenue is unable to show any reason for deviating from the past assessment years. We find that this Court has only dismissed the Revenue's appeal holding that there is no reason for deviating from the past assessment years, but the method of accounting, which is unable to give true and correct picture of the accounts, was not examined or raised as held by the Hon'ble Supreme Court in British Paints India Ltd.'s case (supra).

Thus, the findings of the Tribunal and of the Commissioner of Income Tax (Appeals) in respect of setting aside the addition relating to the closing stock are set aside and that of the Assessing Officer are restored.

Consequently, while answering both the substantial questions of law in favour of the appellant – Revenue, the present appeal is allowed.

(HEMANT GUPTA)
JUDGE

30.01.2015
Vimal

(HARI PAL VERMA)
JUDGE