

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.818 of 2008
Date of decision: 1.10.2015**

M/s Superfine Knitters Limited

.....Appellant

CIT, Aayakar Bhawan, Ludhiana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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: Mr. S.K.Mukhi, Advocate for the appellant.
Mr. Rajesh Katoch, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 11.7.2008, Annexure A.1 passed by the Income Tax Appellate Tribunal, Chandigarh 'B' Bench (in short, "the Tribunal") in ITA No.187/CHD/2008 and CO No.13/CHD/2008 for the assessment year 2004-05. This appeal was admitted on 14.5.2009 to consider following substantial questions of law:-

"I. That on the facts and circumstances of the case, the ITAT was not justified in allowing partial relief by confirming 50% of the addition deleted by the CIT(A) on account of wastage which is unwarranted under established principles of law that in case an authority is satisfied for the basis adopted by an assessee then either the addition is to be confirmed or deleted in

toto and thus the partial confirmation by the ITAT is bad in law.

II. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that appellant was not entitled to the deduction under section 80HHC on the surrendered amount though utilized for the business of the appellant without placing any evidence against the assessee on record and without rebutting the evidence presented by the assessee on record?

III. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that appellant was not entitled to the deduction under Section 80HHC on the interest received on FDRs which though were maintained for the purpose of taking limits from the Banks and thus was factually directly and intrinsically related to the business activities of the appellant and thus was eligible for the impugned deduction in view of established principles of law?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a limited company based at Ludhiana. It is engaged in the business of manufacturing and trading of hosiery knitted cloth and garments. A survey operation under Section 133A of the Act was conducted on 5.3.2004 at the business premises of the assessee. During the course of survey operation, the assessee surrendered an amount of ₹ 20 lacs. It filed return of income for the assessment year 2004-05 on 31.10.2004 declaring income of ₹ 25,94,290/-. The case of the assessee was processed under section 143(1)(a) of the Act on 25.3.2005 on the returned income and was selected for scrutiny. The assessee filed the requisite information/documents. During the course of assessment, issue of wastage, surrender amount of ₹ 20 lacs and deduction under Section 80HHC of the Act on interest income was

considered by the Assessing Officer. The assessee was asked to furnish reply as to why there was unusual increase in wastage of 8897.267 kgs. in the last 26 days of the financial year after the survey operation. The assessee filed reply. The Assessing Officer on the basis of the record of earlier years disallowed the entire amount of wastage and calculated the wastage on the basis of his whims and fancies. The Assessing Officer also disallowed deduction under Section 80HHC of the Act on the surrendered amount of ₹ 20 lacs though it was surrendered and taxed as business income. The interest earned on FDRs which was maintained for the purpose of taking limits from the Banks and thus being directly related with the business of the assessee was also not allowed vide order dated 28.12.2006, Annexure A.3. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] where the wastage account was duly allowed after considering the facts, evidence and other details of the manufacturing process duly depicted in the regular books of account being audited and for which no defect had been pointed out by the Assessing officer nor he had rejected the books of account under Section 145 of the Act. However, the CIT(A) confirmed the action of the Assessing officer in not allowing deduction under Section 80HHC of the Act regarding the amount surrendered of ₹ 20 lacs and that of the interest on FDRs having maintained for the purpose of taking limits from the Banks vide order dated 14.12.2007, Annexure A.2. The revenue challenged the order passed by the CIT(A) before the Tribunal regarding the deletion on account of wastage as according to the revenue it was without any reasons and the wastage claimed was in excess to the wastage as claimed in earlier years by the

assessee. The assessee filed cross objections against the relief declined by the CIT(A). The Tribunal reduced the addition to 50% of the total i.e. from the total addition of ₹ 20,12,092/- to ₹ 10,06,000/-. Thus the Tribunal partly allowed the appeal filed by the revenue and dismissed the cross objections filed by the assessee. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. Question No.I relates to excess wastage claimed by the assessee. The Tribunal had disallowed 50% of the wastage claimed by the assessee. According to the learned counsel for the assessee, no addition could have been made without rejecting the books of account especially when every entry of wastage was vouched.

5. On the other hand, learned counsel for the revenue relied upon findings recorded by the Tribunal to the effect that in the entire year, the average wastage per day came to 66.734 kgs whereas during the impugned period for 25 days, wastage shown was 8897.267 kgs. giving an average of 355.89 kgs.

6. No explanation much less satisfactory explanation has been given by the assessee except to urge that the books of account were not rejected by the Assessing Officer. The vouching of the wastage would be with regard to sale etc. but that by itself would not entitle the assessee to claim any excess amount thereunder. The relevant finding recorded by the Tribunal while adjudicating this issue is very material which reads thus:-

“3. The next ground raised by the revenue is that the learned CIT (A) erred in deleting the addition of ₹ 20,12,092/- made on account of excess wastage, claimed by the assessee. The contention on behalf of the revenue is that in comparison to

earlier assessment years, excess wastage has been claimed by the assessee that too without assigning any valid reasons. On the other hand, the contention

<i>Particulars</i>	<i>Quantity (Pcs)</i>	<i>Quantity (Kg.)</i>	<i>Particulars</i>	<i>Quantity (Pcs)</i>	<i>Quantity (Kg)</i>
Opening stock	4550	1706.25	Sale local	141065	52899.375
Finished goods	242023	113448.281`	Sale Bison	30695	11510.625
			Sale Export	44936	16851.000
			Cutting waste		22689.656
			Closing stock	29877	11203.875
Total	246573	115154.531		246573	115154.531

on behalf of the assessee is that on average 20 to 30% wastage is allowable in such type of business whereas there is increase of 9% in the impugned assessment year that too within the allowable limit.

We have considered the rival submissions and perused the material available on the file. On perusal of quantitative tally of garments finished goods as on 5.3.2004. It was found that there is wastage of 22679.656 kilograms whereas the tally as on 31.3.2004 increased to 31,586.923 kilograms. On a questioning from the revenue, the assessee furnished the details of cutting wastage and claimed that the said increase is due to change in the fashion and demand of particular parties. It is an admitted fact that the assessee duly reflected the cutting wastage in the closing stock and the two quantitative trading accounts for manufacturing of garments and wastage due to cutting as on 5.3.2004 and 31.3.2004 are reproduced herewith:-

Quantitative details of closing stock as on 5.3.2004 (Garments)

Cutting Waste

<i>Particulars</i>	<i>Quantity (Kg.)</i>	<i>Particulars</i>	<i>Quantity (Kg)</i>
Opening stock	3300.00	Sale	12770.000
Garments	22689.656	Closing stock	13219.656
Total	25989.656		25989.656

Quantitative details of closing stock as on 31.4.2004 (Garments)

<i>Particulars</i>	<i>Quantity (Pcs)</i>	<i>Quantity (Kg.)</i>	<i>Particulars</i>	<i>Quantity (Pcs)</i>	<i>Quantity (Kg)</i>
Opening stock	4550	1706.25	Sale Local	166981	62617.875
Finished goods	298646	143576.923	Sale Bison	39795	14923.125
			Sale Export	45914	17217.750
			Cutting Waste		31585.923
			Closing stock	50500	18937.500
	503190	145283.173		303190	145283.173

Cutting Waste

<i>Particulars</i>	<i>Quantity (Kg.)</i>	<i>Particulars</i>	<i>Quantity (Kg)</i>
Opening stock	3300.00	Sale	12770.000
Garments	31586.923	Closing stock	22118.923
Total	34886.923		34886.923

Quantitative details of closing stock as on 5.3.2004 (Garments)

Particulars	Quantity (Kg.)	Particulars	Quantity (Kg)
Opening stock	1706.25	Sale local	157034
Purchases	770	Sale export	2111124
Sale return	3576	Closing stock	4550
		Finished goods	17236
Total	182708		182708

If the aforesaid details are analysed, it is seen that the learned Assessing Officer in the body of the assessment order itself has admitted that for the first 340 days of the relevant financial year, the average wastage per day comes to 66.734 kg. while in the last 25 days, the wastage comes to 355.89 kg. per day. Admittedly, there is a steep rise in the wastage addition can be made on such basis. As claimed by the assessee, this wastage is due to change in the fashion and the specified demand of the parties while finishing the garments. At the same time, the assessee sold the wastage also and showed in its accounts. It is also a fact that the assessee maintained the full details of such wastages, the sales and

purchases are fully vouched and the accounts are audited one. The Assessing Officer has not pin pointed any defect in the accounts. As far as wastage is concerned, it depends upon so many factors like quality of cloth use of particular thread change in the fashion, demand of particular parties and also the use of garments i.e. the garments used by small children are having excess wastage due to fashion and design etc., therefore, the excess wastage itself cannot be the only basis for addition. Even otherwise, unless and until the accounts are defective and not rejected, the excess wastage itself cannot be considered to be the basis for addition. Though, in principle, we are in agreement with the stand of the CIT(A), still since the survey was made on 5.3.2004 and assessee made the claim of 22689.656 kg. as wastage the daily wastage, on average comes to 66.734 kgs. whereas during the impugned period (25 days) assessee showed the wastage of 8897.267 klgs. meaning thereby average daily wastage of 355.89 kgs. This increase is not supported by any commensurate increase in the production by the assessee. At the same time, the claim of the assessee also simply cannot be brushed aside, therefore, keeping in view the overall facts and circumstances, we reduce the addition to 50% of the total i.e. ₹ 10,06,000/- in place of ₹ 20,12,092/- made by the learned Assessing Officer, because firstly, upto 5.3.2004 no disallowance was made by the learned Assessing Officer himself, and secondly the steep increase in the wastage is not supported by any evidence like consequential increase in production etc. Lastly, if not the least, the Assessing Officer has not made blind addition and before 5.3.2004 it was allowed. We are making it clear that the aforesaid adoption may not be treated as precedent for other assessment years as this belongs to facts of the present assessment year only, therefore, this ground of the revenue is partly allowed.”

It is a question of fact adjudicated by the Tribunal which is a plausible view. In such circumstances, no interference is called for with the findings recorded by the Tribunal.

7. Question No.II relates to the amount of ₹ 20 lacs which was surrendered by the assessee which was from business income. Learned counsel for the assessee submitted that the assessee was entitled to deduction under Section 80HHC of the Act and the Assessing Officer should have allowed the same. Reliance was placed on judgments in *CIT vs. Suman Paper and Boards Limited*, (2009) 314 ITR 119 (Guj.) and *CIT vs. Margaret's Hope Tea Co. Limited*, (1993) 201 ITR 747 (Cal.).

8. On the other hand, learned counsel for the revenue relied upon decisions of this Court in *Sangeeta Tools Pvt. Limited vs. CIT, Aayakar Bhawan, Ludhiana*, ITA No.171 of 2009, decided on 8.8.2013 and *M/s Tudor Knitting Works Pvt. Limited vs. CIT, Aayakar Bhawan, Ludhiana*, ITA No.440 of 2010, decided on 8.8.2013. Reliance was also placed on decision of this Court in *National Legguard Works vs. CIT and another*, (2007) 288 ITR 18.

9. After hearing learned counsel for the parties, we do not find any substance in the contention of the learned counsel for the assessee. The Tribunal while rejecting similar contention had noticed as under:-

“We have perused the impugned order and considered the arguments advanced from both sides. The learned appellate Commissioner has relied upon the decision of the Hon'ble High Court as decided in the case of *Rani Paliwal vs. CIT* (268 ITR 220 (P&H) on the issue of treatment of interest. As far as to the treatment of ₹ 20 lakhs, surrendered during the course of survey, admittedly, these amounts have not been assessed under the head profit and gains business, therefore, the Assessing Officer was found to be justified in excluding 90% of the same from the profit of business for computing deduction under Section 80HHC. In view of these facts, we have not found any

infirmity in the impugned order because the surrendered amount cannot be said to be derived by the assessee from the goods or mercantile. The surrender was made by the assessee on the accepted norms that something was hidden by the assessee and was not duly explained. At the same time, it was wilful surrender by the assessee. It is not the case of the assessee that it was a forced surrender. In view of these facts, the assessee cannot claim the same due to the nature of agreed addition/agreed surrender, consequently, this cross objection of the assessee is having no merit.”

10. The Tribunal had recorded a finding of fact that the amount of ₹ 20 lacs which was surrendered during the course of survey was never assessed under the head “income from business or profession” and thus the same was not available for computing deduction under Section 80HHC of the Act. Accordingly, question No.II is answered against the assessee. In ***Suman Paper & Boards Limited's*** case (supra), the Gujarat High Court was considering the issue of deduction under Sections 80I and 80IA of the Act. It was held that in the light of provisions of section 158BB of the Act as amended by the Finance Act, 2002 retrospectively w.e.f Ist July 1995, no fault could be found with the impugned order of the Tribunal holding that the assessee was entitled to claim deduction under Section 80I or 80IA of the Act in the block assessment. In ***Margaret's Hope Tea Co. Limited's*** case (supra), the assessee's main activity was the cultivation, manufacture and sale of tea. The cash credits account had appeared in the assessee's books of account. The Tribunal was held justified in holding that the cash credits appearing in the books of account should be treated as income of the assessee from its tea business and not as income from undisclosed sources.

Such is not the situation in the present case. Thus, the assessee cannot

derive any advantage from the said pronouncements.

11. This Court while considering identical issue in *National Legguard Works's* case (supra) recorded as under:-

“7. We are unable to accept this submission. Deduction under Section 80HHC of the Act is available only on showing fulfilment of conditions specified therein and there could be no presumption that surrender made on account of unexplained stocks represented export income. The assessee was unable to give any explanation. There could be no presumption that additional amount surrendered represented income from exports. Deduction under Section 80HHC of the Act can be claimed only on showing facts which made the assessee eligible for the deduction. The burden to prove these facts was on the assessee and not on the Revenue.

8. The judgment relied upon is on its own facts and not in respect of claim for deduction under Section 80HHC of the Act. In any case, from the facts of the present case, the assessee cannot be held to be entitled to claim income surrendered as a result of unexplained stocks as Income from exports.”

12. Adverting to question No.III, the claim was made by the assessee for deduction on account of interest received on FDRs under Section 80HHC of the Act. It was urged by the learned counsel for the assessee that the amount of ₹ 1,07,941/- which was interest income was on account of interest received on FDRs maintained for the business purposes and thus was admissible for deduction under Section 80HHC of the Act.

13. Learned counsel for the revenue supported the order passed by the Tribunal.

14. The Tribunal while rejecting the aforesaid contention recorded as under:-

“6. Now we shall take up the cross objection of the assessee on the plea that in the impugned order on the ground that the learned CIT(A) erred in not allowing the deduction as claimed under section 80HHC of the Act. The claim of the assessee is that the deduction of ₹ 1,07,941/- under Section 80HHC has been wrongly worked out because the Assessing officer included 90% of the interest receipts and also reduced 90% of ₹ 20 lakhs being the sum surrendered at the time of survey from the profits of the business for computing the deduction. On appeal, the submission of the assessee is that the interest was received by the assessee on FDRs which was maintained for the purpose of taking limits from the bank. For the amounts surrendered by the assessee, it was claimed that it was also a part of business income.”

15. No illegality or perversity in the aforesaid finding was shown by the learned counsel for the assessee, warranting interference by this Court. Accordingly, this question is also answered against the assessee.

16. In view of the above, all the questions are answered against the assessee. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

October 1, 2015
'gs'

(Ramendra Jain)
Judge