IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-348-2013
Date of decision:- 05.08.2015

The Commissioner of Income Tax, Patiala.
...Appellant

Versus

M/s Super Pipes, Bhawanigarh.
...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

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

Mr. S.K. Mukhi, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Income Tax Appellate Tribunal dated 21.05.2013 deleting the addition of about ₹ 15,43,000/- in respect of the block period 01.04.1985 to 23.11.1995.

2. According to the appellant, the following substantial questions of law arise in this appeal:-

> *(i) Whether in the facts and circumstances of the case, the order passed by the Hon'ble ITAT is perverse in law being self contradictory while upholding the rejection of books of accounts on one hand and simultaneously disallowing additions of undisclosed income for the block period which were made on the basis of search on the other hand?*
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> *(ii) Whether in the facts and circumstances of the case, the Hon'ble ITAT has erred by holding that no trading addition by estimating the sales of whole of the block period was called for and thereby the additions of undisclosed income were disallowed?*

3. On 23.11.1995, a search was conducted under Section 132 of the Income Tax Act, 1961 at the business premises and at the residential

premises of the partners. Certain documents were seized. The entire addition is made on the basis of two bills bearing Nos. 739 and 740 in the sum of ₹ 97,790/- and ₹ 38,920/- aggregating to ₹ 1,36,710/-. The books of account, however, recorded the amounts in respect of these bills as ₹ 3600/- and ₹ 7200/-, respectively. The total billed amount for the relevant date, namely, 14.02.1994 was ₹ 2,52,774/-. The Assessing Officer, therefore, proceeded on the basis that receipts to the extent of 54% were kept out of the books. On the basis of these two bills, he applied the rate of 54% for the years 1994-1995, 1995-1996 and 1996-1997. The assessee surrendered ₹ 1,70,000/-.

4. The Tribunal has dealt with this approach of the Assessing Officer in considerable detail. The Tribunal has also analyzed the facts in considerable detail. Some of the factors taken into consideration by the Tribunal in deleting the addition are as follows.

That only two such bills were found. The assessee's explanation was that they had been cancelled and, therefore, bills in lieu thereof bearing the same numbers were issued. The assessee affirmed the same by filing an affidavit from a partner of the firm to whom the goods had been sold and by a proprietor to whom also the goods had been sold. They confirmed that the supply had been cancelled; that they never received any amount from the assessee against the said bills and that they had not made any payment in respect thereof. It was found that this evidence had not been controverted by bringing any cogent material on record. It was observed that there were several transactions and that if the assessee had been indulging in the alleged practice, there would have been more such bills. In view thereof, the Assessing Officer's presumptions were held to be unsupported by any cogent material on record. It was held that based on the two bills it could not be inferred that the assessee had indulged in the alleged practice in respect of the bills.

The persons in whose names the two bills were raised filed affidavits stating that the bills had been cancelled and, therefore, bills containing the same numbers were issued. The order had been cancelled and payments, as stated in the original bills, were not made. There was no evidence to controvert their statements.

5. The entire basis of making the addition was only in view of the two bills. There were several bills during that period. There was no justification for presuming that in respect of every bill amount(s) had been taken which was not recorded in the books of account. More important is the fact that the Assessing Officer did not doubt the GP rate of 7.4% declared by the assessee/respondent. The books of account were also subject to verification by the Excise Department which did not find any discrepancy. It is not as if the Tribunal did not take into consideration the fact that the books of account had been rejected and that the correctness of the rejection of the books had been upheld finally.

6. The matter really involves an appreciation of all the facts and surrounding circumstances. The impugned order cannot be said to be perverse.

7. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

05.08.2015
Amodh