IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.49 of 2013 (O&M)
Date of decision: 15.10.2015

The Commissioner of Income Tax, Jalandhar II, Jalandhar
……Appellant

M/s Laggar Industries Limited, Jalandhar

…..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. Vivek Sethi, Advocate, Advocate for the appellant-revenue.
Mr. Salil Kapoor, Mr. Saurabh Kapoor, Mr.Sumit Lalchandani and Mr. Anil Miglani, Advocates for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.49 and 50 of 2013 as according to the learned counsel for the parties, the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No.49 of 2013.

2. ITA No. 49 of 2013 has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 20.11.2012, Annexure P.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench Amritsar in ITA No.91(ASR)/2011, for the assessment year 2007-08, claiming following substantial questions of law:-

"i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in allowing the appeal of the assessee by deleting the addition of ₹ 5,59,50,097/- made by the AO and sustained by learned CIT(A) on account of suppression of sales and after rejecting the books of account under section 145(3) of the IT Act, 1961 ignoring the fact that the AO has rightly made the addition by thoroughly examining assessee's trading/manufacturing account and elaborately discussing each and every relevant aspect and found that unaccounted production and sale had taken place throughout the year which fact has also been confirmed by the learned CIT (A)?

ii) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT has failed to appreciate that the CIT(A) had confirmed the addition of ₹ 5,59,50,097/- which also included the unexplained investment relating to unaccounted sales?"

In ITA No.50 of 2013, the following question has been claimed by the revenue:-

"Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was justified in dismissing the appeal of the revenue by confirming the order of learned CIT(A) who deleted the addition of ₹11,72,09,656/- made by the AO on account of suppression of sales and after rejecting the books of account under section 145(3) of the IT Act, 1961 ignoring the fact that the AO has rightly made the addition by thoroughly examining assessee's trading/manufacturing account and elaborately discussing each and every relevant aspect and found that unaccounted production and sale had taken place throughout the year which fact has also been confirmed by the learned CIT (A)?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.49 of 2013 may be noticed. The assessee

filed its return of income on 30.10.2007 declaring total income of ₹ 9,29,133/-. During the assessment proceedings, the Assessing Officer made addition on the basis of the data submitted by the assessee (Chart A) in which details of monthwise consumption of various raw material, production of finished goods, scrap generated etc. were given. The Assessing Officer issued show cause notice to the assessee on 18.12.2009 pointing out that the said chart revealed unbelievable variation in the ratios of production to raw material consumptions, of scrap generation, of invisible loss and even negative losses in two months. The scrap generation was shown at 5,182.994 MTS on raw material consumption of 10,820.442 MTS which was a very high ratio as compared to the percentage of scrap generated by standard mills using induction furnaces or rotary furnaces. The Assessing Officer asked the assessee to show cause as to why the production should not be worked out on the basis of normal ratios of production by other mills. The assessee submitted that there were mistakes in the figures submitted before the Assessing Officer by its accountant. The assessee submitted a fresh chart showing the consumption of raw material, production of finished goods and scrap, invisible loss etc. The Assessing Officer did not accept the revised chart on the ground that such a mistake could not have been committed by the accountant since it was the assessee who was maintaining excise records of purchase and sales. The Assessing Officer rejected the book results under section 145(3) of the Act. The Assessing Officer prepared another data Chart 'D' for the consumption of raw material using the information on material. The assessee had valued its closing stock of angle at a rate of 11.89% higher rate than the average sale rate of Angles and closing stock of rods was valued at rates 52.52% higher than the average sale rate of rods. The closing stock of scrap was valued at rates 95.92% higher than its average sale rate. He valued the sale rate of the production of 10117.48 MTS of finished goods of angle and rod and 432.83 MTS of scrap at the rate taken in closing stock for valuing them to arrive at the difference in sale consideration of ₹ 16,53,07,623/- to which GP at the rate of 4.75% of cost price was added to arrive at the addition of ₹ 17,31,59,753/-. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 31.12.2010, Annexure P.2, the CIT(A) allowed relief of ₹ 11,72,09,656/-. Both the assessee and the revenue filed appeals before the Tribunal. Vide order dated 20.11.2012, Annexure P.3, the Tribunal allowed the appeal of the assessee and dismissed that of the revenue by deleting the addition of ₹ 5,59,50,097/- made on account of suppression of sales which was sustained by the CIT(A). Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. A perusal of the orders passed by the authorities below shows that the assessment order was passed by the Assessing Officer on the ground that there was variation in the ratios of production to raw material consumptions, of scrap generation, of invisible loss and even negative losses in two months. The assessee was asked to show cause as to why the production should not be worked out on the basis of normal ratios of production by other mills. The assessee submitted that there were mistakes in the figures committed by its accountant. The assessee submitted a fresh chart giving revised figures. The Assessing Officer did not accept the same.

It was noticed that such mistake could not have been committed by the accountant since the assessee was maintaining excise records of purchase and sales. The source of the revised figures of raw material consumption was not entered into the stock register produced by the assessee before him. Further it was held that the revised figures were manipulated and the assessee's books were not reliable and the same were rejected. On appeal by the assessee, the CIT(A) recorded that the Assessing Officer was not justified in taking the rate of goods in the closing stock as the rate of sale of goods for estimating the unaccounted sales since the sale rates may vary during the year and the closing stock rates are only the rates at the end of the year. When the unaccounted production and sales had taken place throughout the year, application of the average rate of sales during the year should give a better picture of the unaccounted sales. Since the entire cost of raw material and manufacturing cost had been debited to the profit and loss account by the assessee and the addition was only on account of suppression of sales,no further deduction of expenditure against the aforesaid computed suppressed sales was allowed. Hence addition of ₹ 5,59,50,097/- was sustained out the addition of ₹ 17,31,59,753/- made by the Assessing Officer. Both the assessee and the revenue filed appeals before the Tribunal. The Tribunal after considering the matter allowed the appeal filed by the assessee and dismissed that of the revenue holding that the revised figures submitted by the assessee having not been considered, the books of account could not be rejected and no addition on that account could be made. Thus, the Tribunal deleted the additions. The relevant finding recorded by the Tribunal reads thus:-

> "13.2 As a matter of fact, controversy has arisen only for non consideration of the revised chart, which has been submitted and of course perused by both the authorities below but not considered for the reasons best known to them, though the revised figures were found to be correct but the same having not been considered, the books of account cannot be rejected and no addition on this account can be made. Therefore, the learned CIT(A) is not justified in confirming the action of the AO with regard to rejection of books of account and sustaining the additions accordingly."

6. From the perusal of the order passed by the Tribunal, we find that the Tribunal being a final fact finding authority has not examined the material and evidence on record. Detailed reasons have not been given for deleting the additions. Consequently, the impugned order is set aside and the matter is remanded to the Tribunal to decide it afresh after hearing learned counsel for the parties in accordance with law and giving detailed and cogent reasons. The appeals stand disposed of.

(Ajay Kumar Mittal)
Judge

October 15, 2015
'gs'

(Ramendra Jain)
Judge