IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-133-2015 (O&M)
Date of decision:- 28.07.2015

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

Versus

M/s Gobind Castings (P) Ltd.
...Respondent

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

Present: Mr. Rajesh Katoch, Advocate,
for the appellant.

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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 25.11.2014 dismissing the appellant/department's appeal against the order of the CIT (Appeals).

The matter pertains to the assessment year 2006-2007.

2. The only issue pressed is as follows:-

> *"(i) Whether on the facts and circumstances of the case and in law the ld. ITAT is justified in upholding the finding of the CIT(A) that the transactions in derivative trading of commodity shown by the assessee were genuine transactions?"*

3. Mr. Katoch says that the result of the other issues will follow the result in respect of the first issue.

4. The question, therefore, is whether the derivative transactions entered into by the respondent/assessee are genuine or not. As noted by the Tribunal, the assessee had allowed the broker to retain the profits earned in order to provide more margin and most of the times funds remained with the broker. The CIT (Appeals) and the Tribunal have held the derivative transactions to be genuine after considering the facts of the case and

weighing the evidence. The issue does not raise a substantial question of law. It essentially involves an appreciation of the evidence. It was held that the mere fact that no brokerage was paid in advance does not indicate that the transactions are not genuine. That would depend upon the relationship between the broker and the client. It is possible that brokerage could even be adjusted from the receipts. It is also possible that brokerage could be paid subsequently. The broker not having answered the summons cannot be held against the respondent/assessee. Nothing prevented the appellant from enforcing his attendance. The accounts of the broker tallied. We agree that the broker having not paid the service tax cannot be held against the assessee. As rightly observed, the broker may not have even crossed the limit making him liable to pay the service tax.

5. In these circumstances, there is no warrant for interfering with the finding of fact that the transaction is genuine.

6. As we mentioned earlier, the result of the other issues raised follows the result on the first question.

7. The appeal is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

28.07.2015
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