IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.230 of 2015
Date of decision: 28.9.2015

Commissioner of Income Tax (Central), Gurgaon
……Appellant

M/s Punjab Plywood Industries Limited
…..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. Rajesh Sethi, Sr. Standing counsel
with Mr. Arun Biriwal, Advocate for the appellant-revenue.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.201 to 203, 230, 284, 285, 286 and 287 of 2015 as according to the learned counsel for the appellant-revenue, the issues involved in all these appeals are identical. However, the facts are being extracted from ITA No.230 of 2015.

2. ITA NO.230 of 2015 has been preferred by the revenue under Section 260A of the Income tax Act, 1961 (in short, "the Act") against the order dated 28.8.2014, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A' in ITA No.1171/CHD/2013 for the assessment year 2007-08, claiming following substantial questions of law:-

"i) Whether as per law and in the facts and circumstances of the case, the Hon'ble ITAT is justified in deleting addition of ₹ 23,63,243/- on account of unexplained expenditure under head "wages" without appreciating the fact that the assessee failed to furnish any documentary evidence that the list of workers prepared during the search contained the names of the workers working in the sister concern of assessee i.e. M/s Aggarwal Wood Industries?

ii) Whether as per law and in the facts and circumstances of the case, the Hon'ble ITAT is justified in deleting addition of ₹ 3,35,405/- on account of income of Smt.Meena Garg, Prop. of M/s Punjab Timber Trading Company being treated as income of the assessee on substantive basis considering that the AO has given clear finding that during the search, Smt.Meena Garg refused of doing any timber business when her statement was recorded under oath?

Iii) Whether as per law and in the facts and circumstances of the case, the Hon'ble ITAT is justified in deleting addition of ₹ 70,33,524/- on account of difference in valuation of building on the basis of report of the valuation officer without appreciating the fact that the assessee failed to substantiate the source of the said income from which unexplained expenditure was made by the assessee?

iv) Whether as per law and in the facts and circumstances of the case, the Hon'ble ITAT is justified in deleting addition of ₹ 10,98,211/- on account of estimated profit on short stock found on the date of search without appreciating the fact that the assessee concealed the income earned from the unaccounted sale of stock?

v) Whether the impugned order (Annexure A.3) dated 11.7.2014 (correct date being 28.8.2014) passed by ITAT is neither sustainable in the eyes of law nor maintainable in the facts and circumstances of the case and is perverse in nature?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.230 of 2015 may be noticed. The assessee is a firm engaged in the business of manufacturing and treading of core veneer which is consumed by the plyboard industry as also ply and ply board. A search and seizure operation under Section 132(1) of the Act was conducted on Punjab Plywood Group of cases on 20.3.2007. Pursuant to search and seizure operation, case of the assessee for the assessment year 2007-08 was completed under scrutiny vide assessment order under section 143(3) of the Act on 30.12.2008, Annexure A.1. Certain additions/disallowances were made which were contested by the assessee before the Commissioner of Income Tax (Appeals) [CIT(A)] and subsequently before the Tribunal. Certain deletions by the CIT(A) were contested by the revenue before the Tribunal. The issues which were decided by the Tribunal in favour of the assessee are as under:-

i) **Addition of ₹ 23,63,243/- on account of unexplained expenditure on labour:**

Prior to search which was conducted on 20.3.2007, a survey was conducted at the business premises of the assessee on 9.9.2004. The document pertaining to number of workers employed by the assessee prepared during the said survey formed the basis of additions on account of suppression of expenditure on labour for production to the extent of ₹ 23,63,243/- for the year under consideration. The books of account were found to be not reliable. The assessee was given opportunity of hearing to show cause as to why difference in wages worked out at ₹ 23,63,243/- may not be treated as expenses incurred out of income from undisclosed sources. The assessee submitted that the list of workers counted by the survey team were of two premises i.e. M/s Punjab Plywood Industries and adjoining sister concern M/s Aggarwal Wood Industries. The assessee did not furnish any documentary evidence during the course of assessment proceedings that the list in dispute also included the workers working in M/s Aggarwal Wood Industries. Thus, amount of ₹ 23,63,243/- was computed as unexplained expenditure on labour and added back to the total income of the assessee vide assessment order dated 30.12.2008, Annexure A.1. The assessee went in appeal before the CIT(A)(C). Vide order dated 24.10.2013, Annexure A.2, the CIT(A)(C) dismissed the appeal. The assessee approached the Tribunal. The Tribunal allowed the appeal holding that the facts and circumstances of the present issue were identical to the facts and circumstances in the issue raised in the assessment year 2001-02 in the case of the assessee and allowed the claim of the assessee and deleted the addition on this issue.

ii**) Addition of ₹ 3,35,405/- on account of benami Concern being run in the name of Smt.Meena Garg:**

During the search, it was found that a proprietary concern namely M/s Punjab Timber Trading Co. of Smt.Meena Garg wife of Shri Naresh Garg who is one of the partners in the assessee firm was doing business. She denied of having any knowledge of the business activities being conducted in her name. It was concluded that the business was not being done by her but only her name was being used for tax avoidance purpose. Accordingly, income of ₹ 3,35,405/- from her proprietary concern was substantively taxed in the hands of the assessee firm. The assessee was given opportunity of hearing. It was submitted by the assessee that the concern of Smt.Meena Garg was actually doing business and investments by her were well established. The Assessing Officer did not accept the submissions of the assessee on the ground that the issue of existence of business was not under challenge and what was under challenge was the fact that she was actually not doing business but her name was being used by the assessee for tax avoidance purpose. Thus amount of ₹ 3,35,405/- was computed as income of benami concern being run in the name of Smt.Meena Garg and added back to the total income of the assessee. The CIT(A)(C) upheld the addition of ₹ 3,35,405/- on this issue. The Tribunal allowed the appeal filed by the assessee on this issue following the decision taken on this issue in the assessment year 2002-03.

iii) Addition of ₹ 78,15,026/- on account of unexplained investment in construction of factory building:

During the year under consideration, the assessee had made additions to the factory building. The matter was referred to the valuation Officer under Section 142A of the Act. The valuation department reported that the assessee had declared ₹13,83,674/- as investment/new construction as shown on layout plan whereas the valuation officer valued the cost of construction as ₹ 1,08,22,000/-. The assessee was asked to show cause as to why the difference of ₹ 94,38,326/- should not be added to the income of the assessee being unexplained investment. The assessee submitted that it had also got its factory valued from a government approved valuer who had estimated the value at ₹ 27,07,000/-. The objections of the assessee were referred to the Valuation Officer. The Assessing Officer after considering the matter allowed 15% of the total value arrived at by the Valuation Officer in favour of the assessee and thus made an addition of ₹ 78,15,026/- to the income of the assessee as investment from undisclosed sources. On appeal by the assessee, the CIT(A)(C) allowed further benefit of 10% of ₹ 78,15,026/- in view of the fact that some expenditure was admittedly incurred in assessment years 2001-02 and 2003-04 whereas the Assessing Officer added the entire amount in this year. The assessee filed Appeal No.1171/CHD/2013 regarding sustaining of additions by CIT(A)(C) including addition of ₹ 70,33,524/- on this count whereas revenue filed appeal No.1190/CHD/2013 against the order of CIT(A)(C) allowing partial relief to the assessee. The Tribunal disallowed the appeal of the department whereas the appeal of the assessee was partly allowed and the addition of ₹ 70,33,524/- sustained by CIT(A)(C) was also deleted following the judgment of the Apex Court in ***Sargam Cinema vs. CIT***, (2010) 328 ITR 513.

iv) Addition of ₹ 10,98,211/- on account of difference in stock:

During the course of search, it was found that stock as per books was ₹ 2,76,77,856/- whereas as per physical verification by the search team, the stock was found to be worth ₹ 1,94,20,630/-. The assessee was asked to show cause as to why GP on the difference of stock of ₹ 82,576,226/- should not be added to the income of the assessee being GP earned on sales made outside books of account. The assessee submitted that physical verification of the voluminous stock was not proper and that the excise department had found stock tallying with its books of account on 17.7.2007. The Assessing Officer did not accept the submission of the assessee and sum of ₹ 10,98,211 being GP at the rate of 13.3% on the difference of stock of ₹ 82,57,226/- was computed on account of difference in stock and the same was added back to the total income of the assessee.

On appeal, the CIT(A)(C) upheld the entire addition of ₹ 10,98,211/-. The assessee went in appeal before the Tribunal. The Tribunal allowed the appeal filed by the assessee. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the appellant-revenue.

5. The Assessing Officer made additions on all the issues mentioned above. On appeal by the assessee, the CIT(A)(C) upheld the additions except on issue No.(iii) where partial relief was given to the assessee. The Tribunal deleted the additions made by the Assessing Officer and upheld by the CIT(A)(C). The findings of the Tribunal on each issue are as under:-

On Issue No.(i) – The Tribunal for the assessment year 2007-08 had followed the reasoning recorded for the assessment year 2001-02 where similar addition was deleted with the undernoted observations:-

> "11. We have heard the rival contentions and perused the record. In the facts of the present case before us, survey under section 133A of the Act at the premises of the assessee was first conducted on 9.9.2004. Thereafter search and seizure operations were carried out under section 132 of the Act both at the business and residential premises of the assessee. During the course of survey, the team had prepared the list of workers under which it was reported that the total persons working in the premises of the assessee were 59 on monthly roll and 16 on per piece basis. The assessee had booked the expenditure of ₹ 4,67,424/- in assessment year 2005-06 i.e. the year in which survey was conducted. However, in assessment year 2002-03 the total expenditure booked by the assessee was ₹ 1,82,798/-. The Assessing Officer on the basis of the suppressed sales detected consequent to the search carried on at the premises of the assessee on 20.3.2007 applied the ratio of expenses on

labour and production and worked out the ratio of 1:19.6 and computed the expenditure for assessment year 2001-02 at ₹ 4,50,241/- and made an addition of ₹ 2,67,443/-. Similar addition has been made in assessment years 2002-03 to 2006-07.

12. The plea of the assessee before us was two folds that first of all the discrepancy,if any, in the number of workers detected under survey at the premises of the assessee on 9.9.2004 could not be utilized for computing unexplained expenditure on account of wages while completing the assessment under section 143(3) read with section 153A of the Act pursuant to search carried out at the premises of the assessee on 20.3.2007. The second plea raised by the learned AR for the assessee before us was that the list of the workers prepared by the survey team comprised of the workers of sister concerns and merely because the assessee had not pointed out the said fact during the course of survey, does not change the fact situation. We find merit in the plea of the assessee in this regard. First of all, the assessment in the case has been completed under section 143(3) read with section 153A of the Act vide order dated 30.12.2008. The said assessment was made pursuant to the search operation carried out at the premises of the assessee on 20.3.2007. During the course of search the team had detected suppression in sale in the hands of the assessee and had computed income of the assessee after the said detection by making various disallowances under various heads of expenditure. One said head of expenditure was on account of unexplained expenditure on labour. The conclusion of the authorities below was that the assessee had not booked the complete expenditure on wages in its books of account as the number of the workers found during the course of survey were more than the list of workers available in the books of account. First of all the said survey was conducted at the premises of the assessee on 9.9.2004 when the said list was

prepared. The conclusion of the said survey could not be applied while completing the assessment pursuant to search carried out at the premises of the assessee under section 132 of the Act. Secondly, there was no merit in the said addition being made in the hands of the assessee as the explanation of the assessee that the workers of the two concerns were totally considered in the list of workers prepared by the survey team for the assessee firm cannot be ignored. The said list of 59 workers was prepared on 9.9.2004 and the plea of the assessee was that the said 59 workers as on the date of survey belonged to the assessee and its sister concern. The requisite list of workers employed with either of the concerns were filed on record. Merely because the said statement was confronted to one of the partners who had signed the list does not establish that the workers belonged to the firm in which he was a partner i.e. the assessee firm before us. In the absence of any concrete evidence found, we find no merit in the orders of the authorities below and no addition is warranted in the hands of the assessee on the basis of said list prepared by the survey team where the assessee had clearly explained its case that the said total number of workers belonged to two concerns and not to the assessee itself. In any case, the additions in the hands of the assessee for the years under consideration have been made on pure estimation as no evidence of excess workers was found in the years under appeal. In view thereof, we find no merit in the addition of ₹ 2,67,443/- and direct the Assessing Officer to delete the same. The grounds of appeal raised by the assessee are thus allowed."

<u>On Issue No.(ii)</u>

"The issue in ground No.2 raised by the assessee on account of addition of ₹ 3,35,405/- being income of Smt.Meena Garg, proprietary of M/s Punjab Timber Trading Company. The facts, circumstances and issue raised vide ground No.2 is identical to the ground No.2 raised in assessment year 2002-03 and following the same parity of reasoning we find no merit in the said addition. We direct the Assessing Officer to delete the addition of ₹ 3,35,405/-. The ground of appeal No.2 raised by the assessee is thus allowed."

The Tribunal had followed the reasoning for the assessment year 2002-03 which is as under:-

"18. We have heard the rival contentions and perused the record. The Tribunal in ITA Nos.115 to 1170/Chd/2013 in the case of Smt.Meena Garg relating to assessment years 2002-03 to 2007-08, vide order dated 26.2.2014 have held that the income arising from M/s Punjab Timber Trading Company was the sole proprietary concern of Smt. Meena Garg, consequent to which the income arising from the said concern was to be assessed in the hands of Smt.Meena Garg. The learned AR for the assessee has placed on record copy of the Tribunal's order dated 26.2.2014. In view of the income arising to M/s Punjab Timber Trading Company being assessed on substantive basis in the hands of Smt.Meena Garg, after holding that the assessee is the sole proprietary of the business being run under the name and style of M/s Punjab Timber Trading Co, there is no merit in making any addition in the hands of the assessee in this regard. Accordingly, we direct the Assessing Officer to delete the addition of ₹ 1,44,210/-. The ground of appeal No.2 raised by the assessee is thus allowed.

<u>On issue No.(iii)</u>

"37. The issue in ground No.4 raised by the assessee is against the addition made on account of difference in valuation of building on the basis of report of the Valuation Officer.

38. the learned AR for the assessee at the outset pointed out that the books of account of the assessee were not rejected and consequently no addition on account of difference in valuation of the Valuation Officer was warranted in view of

the ratio laid down by the Hon'ble Supreme Court in Sargam Cinema vs. CIT (328 ITR 513 (SC)]

39. The learned DR for the revenue has fairly admitted that the books of account were not rejected.

40. We are of the view that the ratio laid down by the Hon'ble Apex Court in Sargam Cinema (supra) is squarely applicable to the facts of the present case where the books of account were not rejected by the Assessing Officer. On the other hand, the Assessing Officer had referred valuation of the building to the Valuation Officer who had reported the value of the building at ₹ 78,15.026/- as against the cost of the building shown by the assessee at ₹ 70,33,524/-. In view of the ratio laid down by the Hon'ble Supreme Court, no addition on this account can be made in the hands of the assessee where the books of account had not been rejected. Accordingly, we delete the said addition made by the Assessing Officer and reverse the order of the CIT(Appeals) in this regard. The ground of appeal No.4 raised by the assessee is thus allowed.

On Issue No.(iv)

“57.In the totality of the facts and circumstances where the GP rate declared by the assessee has been accepted by the Assessing Officer, we find merit in the plea of the assessee that the same rate should be applied while preparing trading account as on the date of search. During the year under consideration, the assessee had shown fall in GP rate and the explanation of the assessee was that due to huge increase in the turnover there was marginal fall in GP rate, which undoubtedly has been accepted by the Assessing Officer in toto. In view of the totality of the facts and circumstances where we have already upheld the addition of ₹ 4,41,345/- on account of sale depicted in the seized documents being outside the books of account and on account of the explanation given by the assessee that the discrepancy stands reconciled on account of the GP rate to be applied and other discrepancies explained by the assessee, there is no merit in any further addition. Another aspect to be kept in mind is that the information gathered by the Income tax Department during the search proceedings were forwarded to the excise department who in turn visited the premises of the assessee and found no discrepancy in the stock. In the totality of the facts and circumstances, we find no merit in the addition of ₹ 10,98,211/- made on account of estimated profit of short stock found on the date of search. The ground of appeal No.5 raised by the assessee is thus allowed."

6. Learned counsel for the appellant revenue has not been able to show that the approach of the Tribunal is erroneous or that the findings recorded by it are based on misreading or misapplication of evidence or material on record which may call for interference by this Court. Thus, no substantial question of law arises. All the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

September 28, 2015 **(Ramendra Jain)**
'gs' **Judge**