IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 213 of 2011 (O&M)

Date of Decision: 21.4.2016

Commissioner of Income Tax-I, Ludhiana

....Appellant.

Versus

M/s Dimple Exports, Ludhiana

...Respondent.

1. Whether the Reporters of the 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?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

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

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

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 213 and 214 of 2011 as according to learned counsel for the appellant, similar questions of law are involved therein. For brevity, the facts are being extracted from ITA No. 213 of 2011.

2. ITA No. 213 of 2011 has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 25.2.2010 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “A”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 532/CHD/2009 for the

assessment year 2001-02. The appeals were admitted by this Court vide order dated 8.12.2011 for determination of the following substantial questions of law:-

> ITA No. 213 of 2011
>
> Whether on the facts and in circumstances of the case, the finding of the Income Tax Appellate Tribunal in deleting the addition of ₹ 2,13,71,960/- suffers from perversity and therefore not sustainable?
>
> ITA No. 214 of 2011
>
> (i) Whether on the facts and in circumstances of the case, the finding of the Income Tax Appellate Tribunal in deleting the addition of ₹ 3,80,89,424/- suffers from perversity and therefore not sustainable?
>
> (ii) Whether on the facts and circumstances of the case, Hon'ble Income Tax Appellate Tribunal is right in upholding the order of learned CIT(A) dated 27.2.2009 in deleting the addition of ₹ 1,50,000/- made by the Assessing Officer on account of unexplained cash credits appearing in the capital account of new partners i.e. Sh. Rakesh Jain (₹ 50,000/-) and Smt. Meenakshi Soni (₹ 1,00,000/-) when no confirmation was filed by them before Assessing Officer?

3. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee derived income from manufacturing/export and also trading of hosiery goods. On

15.10.2003, the search was conducted under Section 132 of the Act. The notice dated 3.10.2005 under Section 153A of the Act was issued and served on the assessee on 5.10.2005. In response thereto, the assessee filed its return of income on 2.12.2005 for the assessment year 2001-02 declaring nil income and claimed deduction under Sections 80HHC and 80IB of the Act. During the assessment year in question, the assessee declared gross profit of ₹ 3,24,97,935/- on export/sales of ₹ 9,20,83,855/- including Duty Draw Back (DDB) of ₹ 1,18,35,839/-. The assessee claimed to have paid ₹ 2,43,71,960/- as labour charges. The assessee was asked to substantiate labour charges vide order sheet entry dated 10.3.2006 including the names and addresses of the parties to whom paid but it failed to do so. Accordingly, the Assessing Officer vide order dated 31.3.2006 (Annexure A-1) under Section 153A read with Section 143(3) of the Act allowed only ₹ 30,00,000/- as labour charges incurred by the assessee on the basis of the comparable case of M/s Glide Impex wherein the claim of wages was made at ₹ 10.38 lacs against the total turnover of ₹ 34 crores for the assessment year 2004-05. The Assessing Officer, thus, disallowed claim of ₹ 2,13,71,960/- as labour charges. The Assessing Officer further disallowed deduction under Section 80IB of the Act on DDB and assessed income at ₹ 1,01,80,650/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 27.2.2009 (Annexure A-II) partly allowed the appeal upholding the disallowance made by the Assessing Officer on the claim of deduction under Section 80IB of the Act on DDB. Further, the CIT(A) deleted the addition of ₹ 2,13,71,960/- made by the Assessing Officer on account of labour charges. Against the order, Annexure A-II, the revenue filed two appeals bearing ITA Nos. 532-533/CHD/2009 for the assessment years 2001-02 and 2002-03 before the Tribunal. The Tribunal vide a consolidated order dated 25.2.2010 (Annexure A-III) partly allowed the appeal of the revenue by upholding the order of the CIT(A) on the issue of deletion of disallowance of ingenuine labour charges following its own order dated 28.5.2009 for the assessment years 2003-04 and 2004-05 in the case of M/s Dugal Exports. Hence, the present appeals.

4. We have heard learned counsel for the parties.

5. It is not disputed by the learned counsel for the parties that question No. (i) in both the appeals is covered by the decision of this Court in **ITA No. 624 of 2010 (The Commissioner of Income Tax-III, Ludhiana v. M/s S.G. Exports)** decided on 8.2.2011 wherein the question has been answered in favour of the revenue and the matter has been remitted to the CIT(A) for decision of the controversy afresh in accordance with law. Accordingly, question No. (i) in both the appeals is answered in favour of the revenue and the matter is remitted to the CIT (A) for decision afresh in accordance with law.

6. Adverting to question No.(ii) in ITA No. 214 of 2011, it may be noticed that the Assessing Officer had made additions of ₹ 50,000/- and ₹ 1,00,000/-, respectively on account of cash credits in the capital account of the two partners, namely, Shri Rakesh Jain and Smt. Meenakshi Soni as no specific source was explained. On appeal by the assessee, the CIT(A) deleted the said additions by recording as under:-

> "I have carefully considered the contention of the ld. counsel for the appellant and perused the relevant record. Though the A.O. has made addition on the

above ground, as explained by the ld. Counsel, all the three new partners are assessed to Income Tax. Their Ward No. and PAN were duly given before the A.O. Though in his report dated 20.08.2007 filed during the assessment proceedings, the A.O. has maintained that the identity of these persons was not established nor any confirmation was furnished from any one of them, the fact that these persons have been taken as new partners by the appellant and wherein all of them have duly signed the registration deed, it is not known how the A.O. can maintain that the identity of these persons was not established. Further PAN etc. for these persons have been duly mentioned by the ld. Counsel. Therefore, I do not agree with the A.O. that the identity of these persons has not been established. Further, if at all the sources of credits in the hands of these persons were not explained, action could be taken in the hands of these persons only in view of the ratio of the Hon'ble jurisdictional High Court in the case of CIT v. Rameshwar Dass Suresh Pal Cheeka 199 Taxation (P&H) 208 CTR (P&H) 459 which has been relied upon by the ld. Counsel. Keeping in view the entirety of the facts and circumstances and the legal position as discussed above, addition made by the A.O. is not sustainable and it is, therefore, deleted."

On further appeal by the revenue, the order of the CIT(A) regarding deletion of addition of ₹ 1,50,000/- was upheld.

7. The CIT(A) and the Tribunal on appreciation of material on record have deleted the aforesaid additions of ₹ 1,50,000/- made by the Assessing Officer. Learned counsel for the revenue was not able to demonstrate that the approach of the CIT(A) and the Tribunal was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record. The view of the CIT(A) and the Tribunal is a plausible view and deletion of the aforesaid additions was justified. Accordingly, the findings on question No. (ii) are affirmed.

8. In view of the above, both the appeals stand disposed of.

(AJAY KUMAR MITTAL)
JUDGE

April 21, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**