

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.3 of 2010 (O&M)

Date of decision: 3.8.2017

Commissioner of Income Tax-I, Ludhiana

....Appellant

Vs.

M/s Mahavira Cycle Industries

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Rajesh Katoch, Senior Standing Counsel for the appellant-revenue.

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

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 3 and 489 of 2010 as according to the learned counsel for the parties, in ITA No. 3 of 2010, the addition made in the assessment order relating to sale of scrap has been assailed whereas in ITA No. 489 of 2010, the challenge is to levy of penalty under Section 271(1) (c) of the Income Tax Act, 1961 (in short, “the Act”), in respect of the said addition. However, the facts are being extracted from ITA No.3 of 2010 as ITA No. 489 of 2010 relates to levy of penalty as noticed earlier and is dependent upon the order passed in ITA No. 3 of 2010.

2. ITA No. 3 of 2010 has been preferred by the appellant-revenue under Section 260A of the Act against the order dated 12.06.2009, Annexure VII passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘B’, Chandigarh (in short, “the Tribunal”) in M.A. No.

229/CHANDI/2008 arising out of ITA No. 58/CHANDI/2008 for the assessment year 1999-2000, claiming following substantial questions of law:-

- (i) “Whether on the facts and in law, the Hon’ble Income Tax Appellate Tribunal was justified in setting aside the action of the Assessing Officer of excluding the entire amount of the sale of scrap from the ‘profits of the business’ while calculating deduction under Section 80HHC?
- (ii) Whether on the facts and in law, the Hon’ble Income Tax Appellate Tribunal was justified in directing the Assessing Officer to exclude from the ‘profits of the business’ only the proportionate profit earned on amount of sale of scrap excluded from the total turnover whereas the whole of the amount of sale of scrap is the total profit on sale of scrap?
- (iii) Whether on the facts and in law, the Hon’ble Income Tax Appellate Tribunal was justified in deciding the issue in the present case in contradiction to its earlier decision delivered in the case of ACIT Vs. M/s Nahar Spinning Mills Limited in ITA No.750/Chandi/2002, ITA No. 523 & 394/Chandi/2003 and also in the case of M/s Highway Cycles in ITA No. 468 & 644/Chandi/1996 in which it has been held that the sale of scrap may be excluded from the turnover, the same may also be excluded from the profits of the business?

In ITA No. 489 of 2010, the following substantial question of law has been claimed:-

- (i) “Whether on the facts and in law, the Hon’ble ITAT is justified in deleting the penalty imposed under Section

271(1)(c) of the Income Tax Act, 1961 amounting to ₹ 27,73,921/- ignoring the fact that the assessee had furnished inaccurate particulars of its income by claiming excess deduction under Section 80HHC of the Income Tax Act, 1961?”

3. A few facts necessary for adjudication of the controversy involved, as narrated in ITA No. 3 of 2010, may be noticed. The respondent-assessee is a partnership firm which is engaged in making of bicycle parts for exports. Return of income for the assessment year in question was filed by the assessee on 29.11.1999 declaring total income at ₹ Nil after claiming deduction under Section 80HHC amounting to ₹ 1,73,53,957/-. The case was reopened under Section 147 of the Act with the approval of the Joint Commissioner of Income Tax, Range-I, Ludhiana and notice under Section 148 of the Act was issued and served upon the assessee on 20.07.2005. Thereafter, the assessee filed return of income on 25.08.2005 declaring Nil income after claiming deduction under Section 80HHC of the Act amounting to ₹ 1,73,53,957/-. Vide order dated 10.07.2006, Annexure A.I, the assessment was finalized by the Assessing Officer under Section 143(3) of the Act at total income of ₹ 16,92,482/-. The deduction under Section 80HHC of the Act was restricted to ₹ 1,56,61,475/- as against the claim of the assessee at ₹1,73,53,957/-. While computing deduction under Section 80HHC of the Act, the Assessing Officer excluded the amount of sale of scrap from the total turnover and the proportionate profit on sale of scrap from the ‘profits of the business’. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), [CIT(A)] against the order dated 10.07.2006. Vide order dated 25.09.2006, Annexure A.II, the issue was decided in favour of the assessee. However, it was clarified that the sale of

scrap will not be considered while computing the profits of the business. The Assessing Officer vide order dated 3.10.2006, Annexure A.III, computed the income of the assessee at Rs. Nil. It was observed by the Assessing Officer that the effect to the order of CIT(A) passed on 25.09.2006 had not been given correctly in view of the direction that sale of scrap will not be considered while computing the profits of the business. Accordingly notice under Section 154 of the Act was issued to the assessee on 17.11.2006 and income of assessee was computed at ₹ 79,25,489/- after allowing deduction of ₹ 94,28,468/- under Section 80HHC of the Act. Aggrieved by the order dated 28.11.2006, Annexure A.IV, passed under Section 154 of the Act, the assessee filed an appeal before the CIT(A) which was dismissed by the CIT(A) vide order dated 28.12.2007. The assessee filed appeal before the Tribunal. It may be noticed that when the order under Section 154 of the Act was served on the assessee, the assessee also filed appeal before the Tribunal, against the order dated 25.09.2006 passed by the CIT(A), challenging the observation that the sale of scrap will also not be considered while computing the 'profits of the business'. Vide order dated 29.09.2008, the Tribunal decided both the appeals filed by the assessee. The order passed by the Assessing Officer was upheld. Similarly, the order under Section 154 of the Act was also sustained. Aggrieved by the order, the assessee filed an application under Section 254(2) of the Act. Vide order dated 12.06.2009, the Tribunal upheld the orders passed by the Assessing Officer. Hence the instant appeals by the appellant-revenue.

4. We have heard learned counsel for the parties.

5. Admittedly, the assessee had claimed deduction under Section 80HHC of the Act amounting to ₹1,73,53,957/- in its return of

income. The Assessing Officer did not include the sale of scrap in the total turnover for the purpose of deduction under Section 80HHC of the Act. Further, the Assessing Officer excluded the proportionate profit on the sale of scrap from the profits of the business to compute deduction under Section 80HHC of the Act. In appeal the CIT(A) decided the issue in favour of the assessee but clarified that the sale of scrap will not be considered while computing profits of the business. The Assessing Officer computed the income of the assessee at rupees nil. It was observed that since the order passed by CIT(A) was not properly given effect, notice under Section 154 of the Act was issued to the assessee and income was computed at ₹ 79,25,489/- after allowing deduction under Section 80HHC of the Act. The appeal filed by the assessee was dismissed by CIT(A) vide order dated 28.12.2007. The assessee filed appeal before the Tribunal. It was recorded by the Tribunal that if the sale of scrap is excluded from the purview of 'total turnover', the proportionate profit thereof shall also be reduced from the 'profits of the business' for the purpose of computing deduction under Section 80HHC of the Act. Thus, the order passed by the Assessing Officer on this aspect was sustained. With regard to the appeal filed by the assessee against the order passed by the CIT(A) on 28.12.2007 arising out of the order passed by the Assessing Officer under Section 154 of the Act dated 28.11.2006, whereby order dated 3.10.2006 giving effect to the order of CIT(A) was amended, it was recorded that the rectification order was necessitated because the Assessing Officer had not correctly given effect to the order of CIT(A) dated 25.09.2006 in his order dated 3.10.2006. In the amended order, the Assessing Officer computed the deduction under Section 80HHC by excluding the sale of scrap from the total turnover and the proportionate

profit from the profits of the business. Thus, the Tribunal did not interfere with the order passed by the Assessing Officer under Section 154 of the Act.

6. The issue has now been finally decided by the Hon'ble Supreme Court in ***Commissioner of Income Tax-VII, New Delhi Vs. Punjab Stainless Steel Industries***, Civil Appeal No. 5592 of 2008 decided on May 05, 2014 wherein after considering the relevant statutory provisions and the case law on the point, it was held by the Apex Court that the proceeds generated from the sale of scrap would not be included in the total turnover. It was observed that the intention behind the enactment of Section 80HHC of the Act was to encourage export so as to earn more foreign exchange. It was concluded that once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law. The relevant observations recorded by the Apex Court read thus:-

“28. The intention behind enactment of Section 80HHC of the Act was to encourage export so as to earn foreign exchange. For the said purpose the Government wanted to encourage business, traders and manufacturers to increase the export as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once

the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law.

29. For the aforesaid reasons, we are of the view that the view expressed by the High Court is in conformity with the normal accounting practice followed by the traders, including the respondent-assessee and it was justified in coming to a conclusion that the proceeds generated from the sale of scrap would not be included in the 'total turnover'."

7. In view of the law laid down by the Apex Court in ***Punjab Stainless Steel Industries's*** case (supra), learned counsel for the parties submitted that the question regarding inclusion of sale of scrap in the total turnover is required to be examined afresh by the Assessing Officer in the factual matrix of the case. It was urged that in such circumstances, the orders passed by the CIT(A) and the Tribunal be set aside and the matter be remanded to the Assessing Officer for passing fresh order after hearing learned counsel for the assessee on this issue in accordance with law. Ordered accordingly.

8. Since the impugned orders in quantum appeal i.e. ITA No. 3 of 2010 have been set aside and the matter has been remanded to the Assessing Officer for passing fresh order, after hearing learned counsel for the assessee in accordance with law, it was prayed that the orders passed by the CIT(A) and the Tribunal in ITA No. 489 of 2010 be also set aside and the matter be remanded to the Assessing Officer for deciding the issue regarding penalty afresh after the decision in quantum proceedings in accordance with law. Ordered accordingly.

9. Both the appeals stand disposed of as noticed hereinbefore.

(Ajay Kumar Mittal)
Judge

August 3, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes