

Gurbax Singh
2017.03.24 11:07

**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

ITA No. 87 of 2016

Date of decision: 15.03.2017

M/s Lifo International

.....Appellant

Vs.

C.I.T. Ayakar Bhawan, Sector-12, Karnal

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. S.K. Mukhi, Advocate and Mr. Rajiv Sharma,
Advocate for the appellant.

Mr. Yogesh Putney, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

1. The appellant-assessee through the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") impugns the order dated 03.11.2015, Annexure A.3, passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' (in short, "the Tribunal") in I.T.A. No.732/DEL/2011 for the assessment year 2003-04, claiming following substantial questions of law:-

- (i) "Whether under the facts and circumstances of the case, the ITAT was justified in concurring with the order of authorities below in making addition of ₹ 17,07,358/- in

respect of valuation of depleted/unusable/unsalable/rat bitten stock in arbitrary manner?

(ii) Whether on the facts and circumstances of the case, the ITAT was justified in concurring with the order of authorities below in denying the claim of deduction under Section 24 of the Income Tax Act, 1961 out of rental income of ₹ 78,000/- by treating the same as income from other sources by ignoring the facts and circumstances and provisions of law of the present case?

(iii) Whether on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law?”

(iv) Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue under Income Tax Act, 1961?”

2. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the appeal, may be noticed. The appellant-assessee is a firm engaged in the business of sale and purchase of shoes at Karnal. It is also getting rental income. It filed its return of income for the assessment year 2003-04 on 29.10.2003 declaring income at ₹ 7,33,550/- . The return was selected for scrutiny. The assessee appeared before the Assessing Officer and submitted relevant details. The assessee firm is getting income from job work shown from the sale and purchase of PU soles, hawai chappals, sandals and shoes etc. It is also getting rental income from Agra Building given on rent to M/s Liberty Group Marketing Division, its sister concern. The assessee declared income of ₹ 7,21,675/- from its business, ₹ 78,000/- as income being rentals. The Assessing Officer asked the assessee to furnish details of opening stock, purchases and closing stock. The assessee filed the

relevant details. The Assessing Officer held that closing stock as well as opening stock shown by the assessee was not correct. The Assessing Officer made addition of ₹ 17,07,358/- on account of value of closing stock not shown by the assessee firm. The assessee claimed rental income as in the previous years on account of leasing out the factory to its sister concern. The Assessing Officer held that the income was assessed under the head “other sources” as in the past and deduction under Section 24(1) of the Act was not allowed. The assessee filed an appeal before the Income Tax (Appeals) [CIT(A)]. Vide order dated 02.12.2010, Annexure A.2, the CIT(A) dismissed the appeal and upheld the order passed by the Assessing Officer. The assessee filed further appeal before the Tribunal. Vide order dated 03.11.2015, Annexure A.3, the Tribunal partly allowed the appeal.

3. We have heard learned counsel for the parties.

4. The first issue that arises for consideration relates to addition of ₹ 17,07,358/- in respect of valuation of depleted/unusable/unsalable/rat bitten stock. After examining the entire material on record, it has been categorically recorded by the Tribunal that nothing was brought on record by the assessee to prove that the stock was very old. The assessee was not able to produce the last purchase invoice to prove how old the stock was which could be written off/rejected. Thus, the Tribunal rightly upheld the finding recorded by the CIT(A) disallowing the claim made by the assessee. The relevant findings on this issue recorded by the Tribunal read thus:-

“We have heard the rival submissions and have gone through the orders of the entire material available on record. The case of the assessee is that the order of the Assessing Officer is altogether

arbitrary and he has based his assumption on the fact that the closing stock in full and good shape was available with the assessee which is factually incorrect as the samples of rejected goods were personally produced before him for inspection and it was requested that he should depute his staff member for verification of write off/rejected goods which has conveniently been not mentioned in his orders. The Assessing Office has altogether ignored the fact that assessee was closing down its business and has disposed of the entire stock by means of organizing open clearance sales. The fact that business was closing was further proved by the factum that entire fixed assets also stand disposed off during the year. Had the firm been earning profits on its stock why would anyone close of its business i.e. the purpose for which partnership firm was formed. The Assessing Officer had not appreciated the fact that zips which were lying since 1994 which were meant for utilization in export shows how would they remain intact for so many years and were rusted/worn off and could not have saleable market in India. Taking into account all the above facts, and also the fact that the assessee having written off/rejected worn off, stock after organizing clearance sales, having produced the samples of stock before him and offered for inspection for such worn off stock, the learned AR pleaded that the order of Assessing Officer in making addition of such stock at ₹ 17,07,358/- is against facts arbitrary, illegal, void and uncalled for. We find that the assessee has not brought on record anything to prove the stock to be very old, for example the last purchase invoice which would have made it clear how old the stock was

which could be written off/rejected/wron off. Not satisfied with the submissions of the assessee, the learned CIT(A) had disallowed the ground of appeal raised by the assessee. We find no infirmity in the finding of the learned CIT(A) which we uphold and dismiss the ground of appeal raised by the assessee. Thus ground No.2 is dismissed.”

5. With regard to the second issue of disallowance of claim under Section 24(1) of the Act against rental income derived by the assessee at ₹ 78,000/-, the Tribunal concurred with the findings recorded by the Assessing Officer as well as the CIT(A) that since the income was to be assessed under the head “income from other sources”, deduction under Section 24(1) of the Act was not allowable. The relevant findings recorded by the Tribunal read thus:-

“14. Ground No.5 is against the confirmation of disallowance under Section 24(1) against rental income derived by the assessee at ₹ 78,000/-.

15. Facts relating to this ground are that the assessee declared rental income of ₹ 78,000/-. The Assessing Officer did not allow deduction under Section 24(1) of the Act by holding that income is to be assessed under the head income from other sources as was in the past. The learned CIT(A), too, confirmed the action of the Assessing Officer. We find that the learned CIT(A) has come to the conclusion by holding that since the rental income was held to be assessed under the head ‘income from other sources’ deduction under section 24(1) was not allowable.

16. After considering the rival submissions, we find it relevant to reproduce Section 22 of Chapter IV of the Income Tax Act which deals with computation of income from house property reads as under:

Income from house property.

22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head 'income from house property'.

From the above section it is clear that the assessee had let out his factory building to its sister concern and the factory building is not covered under this head. Therefore, deduction under Section 24(1) of the Act cannot be allowed. Accordingly this ground stands dismissed.”

6. The findings recorded by the Tribunal have not been shown to be illegal or perverse by the learned counsel for appellant-assessee. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

March 15, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No