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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 895/2017

PRINCIPAL COMMISSIONER OF INCOME TAX - 7

..... Appellant

Through: Mr. Rahul Chaudhary, Sr. Standing
Counsel with Mr. Sanjay Kumar,
Advocate

versus

THE BASTI SUGAR MILLS CO. LTD.,

..... Respondent

Through: Mr. Piyush Kaushik, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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27.10.2017

1. This is an appeal under Section 260A of the Income Tax Act challenging an order of the Income Tax Appellate Tribunal confirming the orders of the Appellate Commissioner.

2. The assessee is a sugar manufacturer; whose assessment for AY 1999-2000 was picked up for scrutiny. The Assessing Officer, based on the reading of the stock statements was of the opinion that contrary to the declared taxable income, the figure was higher i.e. Rs. 13,54,38,651. The CIT (A) affirmed that order.

3. Upon further appeal, the Income Tax Appellate Tribunal by its order dated 30.11.2010 remitted the matter on the question of stock verification for the previous years 1996-1997, 1997-1998 and 1998-1999, having regard to the stock statements of the hypothecated finished goods and the other relevant records such as those available with the Excise authorities. Para 11 of the ITAT's order of 30.11.2010, outlines the scope of the remit.

4. After carrying out the exercise of verification, the CIT (A) accepted the assessee's contention with respect to the stock available. This meant that figures initially taken into consideration by the AO were disregarded; the stock stood verified in accordance with the assessee's contentions. Consequently, the CIT(A) allowed the appeal. This order was confirmed by the ITAT.

5. Learned counsel highlights that the scope of the remand was to take into account the stock statements filed with the Bank and this was not realistically done. It is contended that the CIT(A) misappreciated the circumstances which resulted in perversity of finding. The ITAT instead of intervening, merely affirmed those findings and erred in law.

6. We notice that the findings of the CIT are based upon an appraisal of not merely the Bank stock statement but also RG-I Registers and Form 3CB duly audited by the Company's auditors, and accepted by the Excise Department. The relevant extract of the CIT's

order is as follows:

“In view of the above primary records maintained by the appellant which are verified by the Central Excise authorities and which have not been found to be untrue or incorrect by the Assessing Officer, there is enough substance in the arguments advanced by the appellant that the books of accounts reflecting the stock details relied the true state of affairs.

Moreover, the AO in his order has only considered the closing stock of sugar as on 31.03.1999, as per the bank statement which is at 3,98,125 Qtls. and after comparing the same with that of the closing stock as on 31st March 1999 in the audited accounts i.e. 3,10,934 Qtls. and gone on to add the difference in excess stock of 87,191 Qtls. as assessee's income for the year. In this connection it is a logical step that when the AO has placed absolute reliance to the closing stock figures as per bank statement for making the above stated addition to income then he should have necessarily taken the figures of opening stock of sugar as well from the same source, namely the statement as on 31.03.1998 as furnished to the bank. This preposition is based on the principle of consistency in approach as it would be improper to place reliance on the book stock for opening balance and in the same breadth the bank statement for closing balance.

Therefore, the opening stock of sugar (which has been duly verified by the Central Bank of India vide letter dated 2.9.2013, in response to notice u/s 133(6) of the Act) as well as the closing stock of sugar, if both are considered as per the statement given to the bank then what remains is quantitative difference of only 3 Qtls. of sugar which is practically negligible. Therefore seen from this perspective too there is no ground for making

addition to income on account of excess stock of sugar in the previous year relevant to this assessment year. These facts also lend credence to the submission of the appellant that the statement of stock pledged with the bank is only for availing financial credit.”

6. This Court is of the opinion that the exercise undertaken by the CIT(A) is based upon sound principles – he did not base himself merely upon Bank stock statement furnished to the Bank but rather went into detail and examined the excise returns and the other audited documents. The appreciation of this evidence is in no way unreasonable and the findings are in accordance with law. The ITAT did not fall into any error in affirming the CIT’s order.

7. No question of law arises.

8. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 27, 2017
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