$~42

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

\+ ITA 1150/2017

PRINCIPAL COMMISSIONER OF INCOME TAX – 7 .... Appellant

Through Mr. Sanjay Kumar with Mr. Rahul Chaudhary, Advocates.

versus

PADMINI VNA MECHANTRONICS PVT. LTD. ..... Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

O R D E R

% **18.12.2017**

1. The Revenue's appeal under Section 260A of the Income Tax Act, 1961 (hereafter referred to as 'the Act') in this case for the Assessment Year 2009-10 urges two grounds. Firstly, that the ITAT fell into error in holding that the disallowance made under Section 14A of the Act was erroneous. Secondly, it is urged that the NIL treatment given to the raw material in the Closing Stock Statement produced with the returns, that was disallowed by the AO, was done correctly and the Tribunal fell into error in confirming the CIT (A)'s finding.

2. To consider the second aspect first, the assessee, which is engaged in the manufacture of automobile spares, had an inventory of raw material/stock valued at Rs.1,46,65,041/-. The same amount was reflected as closing stock and treating this to be a part of the closing stock is incorrect. The assessee valued it at NIL. The AO considered this to be a devise and held against the assessee, principally on the

basis that in the subsequent year, the same stock was utilized for servicing export orders. Both the CIT(A) and the ITAT, after elaborately examining the facts held that the assessee spent considerable amounts, i.e. over Rs.20,00,000/- in (AY 2010-11, the later assessment year) while servicing the export orders.

3. Having regard to these facts, it was held by both the Appellate Authorities that the AO's treatment of this part of the closing stock was not in consonance with law.

4. The CIT (A)'s findings are as follows:-

> *"5.2. I have carefully examined this issue. There were seven items of raw material which were purchased by the assessee partly in earlier years and partly in A.Y. 2009 - 2010 for Rs. 1,46,65,041/-. The assessee valued the same at NIL in the closing stock inventory in 31.03.2009. Two main reasons have been assigned for valuing the same at NIL. The first one being that these items got rusted and were therefore, not considered to be useable. It was so since, these were the raw materials for manufacturing automobile parts. This automobile part was exclusively for export to Spain to M/S. Valeo Termico Motor, where it was used as an input for manufacturing automobile vehicles. Any material which is not absolutely upto the mark could not have been used for manufacturing the items for export since, it might have resulted in to rejection of goods or rejection of vehicle by the customers bringing a big financial loss and reputation loss as well as fear of losing the customers. The other reason being that there was a big recession in the automobile markets. There were no export orders from the said Spain Company after September 2008. There was also no expectation of getting orders in the near future. The said raw material was not useable for any other manufacturing. Hence, it was considered that these items, now being not of*

required quality and since, may not be required for manufacturing on account of no orders; therefore, its valuation was considered at NIL as on 31.03.2009. The appellant again got order from the said Spain company in the month of June 2009. At that time, those items were re – examined and after getting the job - work polishing etc. done thereon for a cost of Rs. 20,11,200/- ion A.Y. 2010 - 2011, the same were found useable for manufacturing the automobile part. These items were again used for manufacturing the automobile parts which were sold in due course. At the time of taking back these items for manufacturing, the input cost for these items has been taken at NIL i.e. no cost has been booked for the use of these items for "manufacturing the relevant automobile part. The appellant has also supported his contentions by furnishing various documents like evidence showing the receipt of export order in the month of June 2009 after a long gap, the evidence of job - work expenses of Rs. 20,11,200/- in A.Y. 2010 - 2011 on those items, the details showing the issuance of said raw material for manufacturing in A.Y. 2010 - 2011, 2011 - 2012 & 2012 - 2013, stock ledger alc. of these individual items for A.Y. 2009 -20 10, 2010 - 2011, 2011 - 2012 & 2012 - 2013 showing i use of these items for manufacturing in these years, evidence of reversal of CENVAT credit, the evidence showing the benefit of CENVAT credit being taken subsequently in the years of re-use of manufacturing, audit report by excise Deptt., the letter sent by the Excise Deptt. to AO dtd. 22.12.2011 confirming the reversal of CENVAT credit. The AO has doubted the genuinenety of the claim for the reason that these items have been used in subsequent years. This factor has been considered adversely by him in the sense that if the items could had been used in subsequent period, there was no reason for valuing the same at NIL. However, under the facts, I am of the considered opinion that the findings of the AO in this regard cannot be sustained."

5. After considering the grounds urged in support of the appeal, this Court is of the opinion that the Revenue's case on this aspect is

not substantial. The AO clearly took note of the subsequent facts to determine whether in truth a NIL treatment was correct and that the assessee chose to retain the goods (which perhaps it felt presented the possibility of use later) cannot *ipso facto* be prejudicial circumstance. The assessee's judgment, as a prudent commercial venture, cannot be ordinarily questioned in these circumstances. No substantial question of law arises. This question is therefore answered against the Revenue.

6. As far as disallowance under Section 14A goes, both the Appellate Authorities have ruled concurrently that the satisfaction to reject the assessee's determination, was in accordance with law. The Revenue has urged to the contrary stressing that the AO had clearly given convincing reasons. Since these are essentially findings of facts, which the Court, in the third appeal, cannot go into.

7. No substantial question of law arises.

8. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

DECEMBER 18, 2017
st