IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 272 of 2015 (O&M)
Decided on : 18.09.2018

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

Versus

Sh.Rohit Tandon Prop. M/s Prajna (India) Ltd.

...... Respondent

2. ITA No. 257 of 2015 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

Versus

Sh.Rohit Tandon Prop. M/s Prajna (India) Ltd.

...... Respondent

3. ITA No. 294 of 2015 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

Versus

Sh.Rohit Tandon Prop. M/s Prajna (India) Ltd.

...... Respondent

4. ITA No. 283 of 2015 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

Versus

Sh.Rohit Tandon Prop. M/s Prajna (India) Ltd.

...... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vivek Sethi, Senior Standing Counsel
for the appellant-revenue.

Mr.Rohit Sood, Advocate
for the respondent.

* * *

AVNEESH JHINGAN, J.

This order shall dispose of four appeals bearing ITA Nos. 272, 257, 294 and 283 of 2015. These appeals have been filed by the revenue against the order of the Income Tax Appellate Tribunal, Amritsar Bench (for brevity, 'the Tribunal'). Since the facts and the issues in the above said appeals are similar, hence, these are being disposed of by a common order.

2. The details of the assessment year and ITA numbers have been tabulated below :-

High Court ITA number	**Tribunal ITA number**	**Assessment year**
ITA No.272 of 2015	ITA No.345 (ASR) 2009 dated 05.03.2015	2006-07
ITA No.283 of 2015	ITA No.410 (ASR) 2010 dated 05.03.2015	2007-08
ITA No.294 of 2015	ITA No.238 (ASR) 2011 dated 05.03.2015	2008-09
ITA No.257 of 2015	ITA No.284 (ASR) 2012 dated 05.03.2015	2009-10

3. For the sake of convenience, the facts are being narrated from ITA No.272 of 2015.

4. The revenue has filed the present appeal under Section 260-A of the Income Tax Act, 1961 (for brevity, 'the Act') against the order of the Tribunal passed in ITA No.345 (ASR)/2009 dated 05.03.2015. According to the appellant, following substantial questions of law arises for consideration in the present appeal:-

(i) Whether on the facts and circumstances of the case the Ld. ITAT is right in deleting the addition on account of disallowance of deduction of `24,59,300/- made by the AO u/s 10B of the Income Tax Act, 1961 ignoring the fact that the new unit has been formed by splitting up of the existing business of M/s Dynamech?

(ii) Whether on the facts and circumstances of the case, Ld. ITAT is perverse in law and on the facts in admitting the additional evidence, a letter dated 14.12.2009 of Mitsubishi heavy industry limited Japan, during rectification proceedings u/s 254(2) which was not produced and considered during original appellate proceedings?

(iii) Whether on the facts and circumstances of the case, the Ld. ITAT has not erred in law in refusing to rectify the mistake which it committed in its order in MA No.98/ASR/2010 as per the mandate of the Hon'ble Supreme Court in the case of Honda Siel Power Products Vs. CIT reported at 295 ITR 466.

(iv) Whether the Ld. Tribunal has not erred in law in not rectifying its order in MA No.98/ASR/2010 before proceeding to hear the ITA No.345/ASR/2009, 410/ASR/2010, 238/ASR/2011, 284/ASR/2012 when it admitted in its order that the Tribunal has committed a typographical mistake by wrongly quoting nine sets of citations relied upon by the assessee without appreciating that the order nine sets of citations had duly been considered by the Bench in its order in ITA No. 345/ASR/2009 and thus the mistake was too obvious and it was enjoined upon the ITAT to rectify the same with a view to doing away the prejudice thus caused to the interests of the revenue as per the mandate of the Hon'ble Supreme Court in Honda Siel Power Products Ltd. CIT (Supra).

(v)Whether the Tribunal has not erred in holding in the last paragraph of page 8 that the order set of nine judgments relied on by the assessee during the appeal proceedings had not been considered whereas the operative part of the order clearly shows that all the judgments were duly considered except one in the case of 138 ITR 338 in the case of CIT Vs. Oswal Wollen Mills (at S.No.4) of the set of nine citations.

(vi)Whether the Ld. Tribunal has not erred in law in refusing to appreciate the mistake which it committed in recalling the order in ITA No.345/ASR/2009 on the ground that "arguments of the assessee were not considered in their proper perspective" as the same amounted to perversity and did not fell within domain of the provisions of Section 254(2) of the Income Tax Act, 1961.

(vii)Whether the Ld. Tribunal has not erred in refusing to first do away with the mistake which it committed in MA No. 98/ASR/2010 before proceeding to hear the appeals in ITA

No.345/ASR/2009 and three others.

(viii)Whether the Ld. Tribunal has not acted in gross violation of the dictate of the Hon'ble Supreme Court in the case of Honda Siel Power Products Ltd. Vs. CIT (Supra) when it refused to rectifying the mistake it committed in its order in MA before proceeding to hear the aforementioned appeals.

(ix)Whether Ld. Tribunal has not erred in law in first refusing to rectify the mistake which itself admitted that it has committed and erred in proceeding to hear the appeal while the department has demanded of the Tribunal to first address itself on the relative merit of its order in MA No.98/ASR/2010 without first indicating to the revenue department that the Ld. ITAT Amritsar is deciding the issue on merits of the case.

5. The facts as transformed from the record are that the respondent is a proprietor of M/s Prajna (India) Ltd., Jalandhar and was engaged in the business of manufacture and export of machine parts. The concern is 100% export oriented undertaking. The assessee was carrying business at Noida in special economic zone. During the assessment year 2006-07, the assessee filed income tax return declaring income of `1,07,060/-. The case was taken up in scrutiny. The Assessing Officer noticed that the appellant was engaged in manufacture and export of machine parts to M/s Mitsubishi Corporation, Japan and has claimed exemption of its entire profits of `24,59,300/- under Section 10B of the Act. The appellant before starting M/s. Prajna (India) Ltd. (hereinafter referred as 'new concern') had a partnership firm by the name of M/s Dynamech. The partnership firm was also engaged in the business of supplying machine parts to the same purchaser i.e. M/s Mitsubishi

Corporation, Japan. The Assessing Officer observed that the new concern has been set up after splitting up the old business and in view of clause 2(ii) of Section 10B, the deduction claimed by the assessee under Section 10B was disallowed vide order dated 31.12.2008.

6. Being aggrieved of the assessment order, the assesseee filed an appeal before the Commissioner of Income Tax (Appeal) (for short, 'CIT(A)'). The appeal was dismissed vide order dated 14.07.2009. Further, the appeal was preferred to Tribunal, same was dismissed vide order dated 31.08.2009. A Miscellaneous application was filed by the assessee before the Tribunal. The application was allowed vide order dated 04.03.2010. The Tribunal recalled its earlier order and heard the matter afresh. By order dated 05.03.2015, the Tribunal allowed the appeal of the assessee. Hence, the present appeal has been filed by the revenue.

7. The bone of contention in the present appeal is, whether the new firm has been formed by splitting business of the earlier partnership of M/s Dynamech and hence hit by Section 10B(2) (ii) of the Act?

8. Section 10B(2)(ii) & (iii) is quoted below :-

Special provisions in respect of newly established hundred per cent export-oriented undertakings.

10B(I). XX XX XX

(2) This section applies to any undertaking which fulfills all the following conditions, namely :—

(i) XX XX XX

(ia) XX XX XX

(ii) It is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in *respect of any undertaking which is formed as a result of the re- establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*

(iii) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanations XX XX XX

9. Section 10B of the Act is a special provision in respect to newly established 100% export oriented undertakings. As per Section 10B(1) of the Act subject to the provisions of the Section, there would be 100% deduction allowable towards profits and gains as are derived by an export oriented undertaking from the export of articles or things. The exemption would be for a period of ten years consecutively starting from the assessment year relevant to the previous year in which the manufacturing activity begins. Sub Section (2) to Section 10B lays down the conditions which the undertaking has to fulfill for claiming exemption under Section 10B(1) of the Act.

10. The Assessing Officer while disallowing the deduction was swayed by the facts that both the concerns were supplying material to one purchaser i.e. Mitsubishi Corporation, Japan; the assessee Rohit Tandon was proprietor of the new concern and partner in M/s Dynamech. The turnover of M/s Dynamech had started falling after establishment of the new concern. The source of capital of the new concern was a gift received from the wife of Sh. Rohit Tandon, who is partner in M/s Dynamech and that the bulk of the machinery has been purchased by the assessee towards the end of the financial year.

11. The CIT(A) though factually did not agree with some of the findings recorded by the Assessing Officer but still upheld the disallowance of claim under Section 10B of the Act.

12. Before the Tribunal, the assessee produced an additional evidence i.e. a letter dated 14.07.2009 from M/s Mitsubishi. The application was allowed and the additional evidence was taken on record. It was contended by the assessee that the new concern was set up with advance modern machinery at a new place to meet fresh requirements of M/s Mitsubishi, Japan. It was also argued that the new concern produced 10-12 new parts upto assessment year 2007-08 and by assessment year 2009-10, 236 new parts were produced. It was contended that the capital of the partnership firm was not transferred to the new concern but the profit earned by the partnership firm was used for establishing the new firm. The Tribunal reversed the findings recorded by the Assessing Officer and allowed the appeal.

13. Learned counsel for the revenue argued that the Tribunal erred in recalling its earlier order and allowing the appeal of the assessee. The grievance raised was that the Tribunal erred in holding that there was no transfer of capital from the existing business and it was not a case of splitting up of the business.

14. Learned counsel for the assessee submitted that the new unit and the partnership firm were producing different products. There was no question of transfer of business. It was argued that the machines imported were received earlier but the agent issued the bills later.

15. Heard learned counsel for the parties.

16. For deciding the issue involved, facts like, the products

manufactured by two units are separate; any existing contracts of M/s Dynamech have been transferred to new firm; the new concern has been set up with advance and modern machinery to meet the fresh requirements of M/s Mitsubishi, Japan; there was any transfer of capital from the firm to the new concern or the capital was actually from the profit earned by the partnership firm needs to be taken into consideration. Apart from the said issues, the other issues raised by the Assessing Officer and the assessee are also required to be pointedly dealt with. It is clarified that facts mentioned herein are only illustrations.

17. It would thus be appropriate that without expressing any opinion on the merits of the case, the matter is remanded back to the Assessing Officer to decide the matter afresh after considering the material produced by the assessee and the contentions raised and by discussing the same in detail by passing a speaking order in accordance with law. Ordered accordingly.

18. The appeals are disposed of in the manner indicated above.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 18, 2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No