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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 13 of 2018
Date of decision: 04.07.2018

Valco Industries Ltd. ... Appellant

Versus

A.C.I.T., Chandigarh ... Respondent

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

Present: Mr. Ashim Aggarwal, Advocate
for the appellant.

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Avneesh Jhingan, J.

This appeal is against the order dated 23.12.2016 passed by the Income Tax Appellate Tribunal, Chandigarh (in short, 'the Tribunal') allowing the appeal of the revenue, remanding the matter back to CIT(A) [hereinafter referred to as CIT(A)] and disposing of the cross objections of the assessee as the same could be raised before CIT (A). The matter pertains to the assessment year 2005-06.

According to the appellant, the following substantial questions of law arises in this appeal:-

SUBSTANTIAL QUESTIONS OF LAW

A. "Whether the order passed by the ITAT without dealing with the merits of the case and simply remanding the case to Ld. CIT(A) is sustainable in law and facts?

B. Whether the ITAT could have ignored its own orders for summoning of records and casually remanded the case on mere technicality without first examining the records?

C. Whether the ITAT being the last fact finding authority was not bound to examine all the factual and legal issues especially when matter was pending before it for long and records had been summoned?

D. Whether the ITAT was bound to specify what evidence as alleged was produced by the appellant before the CIT(A) in violation of

Rule 46A of the Income Tax Rules?

E. Whether the ITAT ought not to have taken adverse inference against the respondent for its failure to produce the record?

F. Whether on the facts and in the circumstances of the case, the ITAT erred in law by not probing the quality and quantity of the alleged additional evidence and examining as to what extent the Ld. CIT(A) used the said additional evidence and whether he exceeded his power in admitting the alleged additional evidence?

G. Whether on the facts and in the circumstances of the case, the ITAT erred in law in not appreciating that the order of the Ld. AO was passed in a summary manner, without discussing the details as to how there was any difference in the quantity of stock and without disclosing the method of arriving at unit rate and the amount?

H. Whether assessment order could have been passed u/s 153A of the IT Act in the case of the appellant when admittedly only survey U/s 133A was conducted?

I. Whether on the facts and in the circumstances of the case, the ITAT erred in law by not allowing the opportunity to the appellant to present arguments on cross objections?

J. Whether the findings of the Income Tax Appellate ITAT are not perverse and vitiated as they are not based on correct appreciation of facts on record?"

The assessee is a Limited Company incorporated under the provisions of the Companies Act, 1956. The appellant is engaged in the business of manufacturing of Aluminum products.

A survey was conducted on 03.09.2004 at the Head office, manufacturing unit and at the residences of all the Directors. During the survey, stock checking was done and certain documents and account books were impounded for verification. During investigation the appellant was called for verification of the documents impounded. Explanations were filed by the appellant. A notice under Section 153A of the Income Tax Act, 1961 (for short 'Act') was served. An ex-parte assessment order dated 21.12.2006 was passed making an addition of ₹35,47,369/-.

Aggrieved of the assessment order, the assessee filed an appeal. In the appeal proceedings, written submissions were filed and certain additional evidences were produced invoking the provisions of Rules 46A of the Income Tax Rules, 1962 (for brevity, 'the Rules'). The CIT(A) after considering the submissions and the additional evidence produced, deleted the addition of ₹35,00,000/- and upheld the addition of ₹47,369/-. The appeal was partly allowed vide order dated 05.05.2008.

The Department filed an appeal before the Tribunal. The assessee also filed cross objections. The Tribunal allowed the appeal of the Department vide order dated 23.12.2016 and remanded the matter back to the CIT(A) to re-consider the matter by strictly following the Rule 46A of the Rules. It was further directed that reasonable opportunity of being heard would be provided to the assessee and the Assessing Officer. Since the matter was remanded back to the CIT(A), the cross objections filed by the assessee were disposed of with liberty to raise the relevant contentions before the CIT(A). Although the assessee claims ten substantial questions of law but the main issue involved in the present appeal is:-

> "*Whether in the facts and circumstances of the case, the Tribunal was justified in remanding the matter back to the CIT(A)*?"

We do not find any error in the order of the Tribunal remitting the matter to CIT(A) for fresh adjudication.

Before the Assessing Officer, the assessee never appeared and accordingly, the assessment was framed under Section 153A read with Section 144 of the Act. Before CIT(A), the assessee produced additional material and the Appellate Authority relying upon the same deleted the addition of ₹ 35,00,000/-. The Department raised grievance before the Tribunal that the additional evidence was admitted by CIT(A) without providing adequate opportunity to the Assessing Officer to rebut the same. The Tribunal sustained such objection and held that the additional evidence relied upon by the CIT(A) while deleting the addition was without confronting the Assessing Officer nor any opportunity was provided to verify or to counter the same. Moreover, the additional evidence was taken into consideration without passing any order permitting it to be taken on record. The Tribunal, consequently, remanded the matter back to CIT(A) for decision as per Rule 46A of the Rules and after compliance of principles of Natural Justice. No fault can be found in the order of the Tribunal.

The contention raised by the learned counsel for the appellant that the Tribunal erred in remanding the matter back to CIT(A) is not well founded. The provisions of Rule 46A of the Rules are required to be adhered to by the First Appellate Authority. In compliance with the principles of natural justice, the additional evidence produced ought to have been confronted to the Assessing Officer and reasonable opportunity provided to rebut the material produced.

No substantial question of law is involved in the present appeal.

The appeal is, therefore, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

4th July, 2018
shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/non-speaking? : *Yes*

Whether reportable? : *Yes*