

\$~40

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

+ ITA 592/2005

ANISH TANDON Appellant
Through : None.
versus

C.I.T. IX Respondent
Through : Mr. Zoheb Hossain, Sr.
Standing Counsel with Mr.
Deepak Anand, Jr. Standing
Counsel for Revenue.

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

ORDER
% **30.08.2018**

On 29.08.2006, while admitting the appeal, the following question of law was framed :

“Whether there is any perversity in the order passed by the Income Tax Appellate Tribunal in coming to the conclusion that the excess stock of Rs.15 lakhs did not belong to M/s Benu Exports (proprietor Anish Tandon)?”

This appeal was shown in the list of cases listed, consistently w.e.f. 21.08.2018. There is no appearance on behalf of the appellant. In these circumstances, the court is proceeding to decide the merits of the appeal.

The facts of this case are that a survey was carried out in the premises of the assessee on 14.09.1995; he is a proprietor of M/s Benu Exports. The survey also covered other concerns i.e. M/s Anish (India Export), proprietor of which was the assessee's father, Shri M.K. Tandon; and M/s R.N. Handi Crafts, owned by Mrs. Neelam Tandon. All the three entities were carrying out their business in the same premises. They claimed 100% export business of fabric garments. Apparently, the assessee additionally carried on its business of cloth trading. At the time of survey, Shri M.K. Tandon, the assessee's father stated that the stock of each concern was not maintained separately and it was not possible to prepare a separate inventory. The total value of the stock was discerned at Rs.31,80,050/- as against the value of the stock disclosed in the books of accounts at Rs.16,80,050/-. A surrender of Rs.15 lakhs, being towards the value of excess stock discovered during the survey, was made as part of the assessee's income for the assessment year 1996-97. In the return of income, however, the assessee claimed a credit towards the value of surrendered stock (Rs.15 lakhs) to the trading account of M/s Benu Exports as business receipts and sought a deduction under Section 80HHC of the Income Tax Act stating that the excess stock represented was only on account of liability consumption of fabric garments for the purpose of export out of India as compared to what is consumed in terms of the standard formula generally applied in the

ITA 592/2005

manufacturing purposes. The Assessment Officer did not accept the assessee's explanation which he deemed to be an afterthought and brought to tax the said sum of Rs.15 lakhs as his income from undisclosed sources under Section 69. He allowed however, a deduction to the tune of Rs.2,96,264/- under Section 80HHC.

The assessee carried out the matter in appeal to the Commissioner of Income Tax (Appeals) who accepted the contentions made. It was *inter alia* observed by the CIT (A) while allowing the appeal that :

"On careful consideration of facts of the case and rival submission on issue, I find substance in the arguments of the authorised representative. It is a fact that it was admitted by the Appellant in response to Q. No. 21 of the statement that the surrendered stock belongs to Benu Export which is engaged in the export of the garments for which income is being assessed to tax from year to year. And it is also a fact that the Appellant explained the manner of generation of excess stock in course of the manufacture of garments for export on account of low consumption of fabric in comparison to standard formula consumption. Thus, the appellant duly discharged the onus of establishing the source of investment in surrendered stock of fabrics as originating from Benu Exports. There is ample authority for the proposition and rightly raised by authorised representative that the assessee cannot be asked to do the impossible and when prima facie evidence is established by assessee and it is not accepted by A.O. a duty is cast upon him to make an inquiry and investigation and disprove the case set by the assessee. This duty cannot be discharged by placing extraordinary onus on the assessee. 107 ITR 938 (SC) Roshan Di Hatti, 1984 152

ITR 507 (Delhi) Sona Electronic Co. (1996) 59 ITO 417 (Chd) Smt. Narinder Bedi (Supra).

xxx

xxx

xxx

Thus since it is accepted that Benu Export is wholly engaged in export of garments, income of which is exempt u/s 80 HHC of the Act and assessee admitted during the survey that stock belongs to Benu Exports and during assessment proceedings co-related the stock with business of Benu Exports. And in the absence of any finding or material bought on record by A.O. to prove that the income as surrendered was from activity other than Benu Exports, the principle pronounced by the Hon. Courts of India in 35 ITR 416 (SC) Laxmichand Baijnath, 64 ITR 593 (Cal) Daulat Ram Rawet Mal, 201 ITR 747 (Cal) Margaret Hope Tea Co. Ltd. and decision rendered on 15.7.98 by ITAT, Delhi Bench C in Raj Kumar Mittal (ITA No. 5610/Del/02), would be applicable as it would have to be held that the source of investment in the surrendered stock of fabric of Rs.15 lacs is income from export of garments by Benu Exports and therefore fully exempt u/s 80HHC of the Act. Hence, the A.D. is directed to recompute the deduction u/s 80HHC accordingly.

The first ground of appeal is against addition of Rs. 15 lacs u/s 69 of the Act. In above paragraphs it has been held that the source of investment in the stock surrendered during survey of Rs. 15 lacs is unexplained income from export activities and deduction u/s 80HHC of the Act is allowed. In view of this finding, this ground of appeal does not survive for decision.”

The ITAT upon appeal by the Revenue, set aside the order of the CIT (A). The ITAT’s relevant findings are as follows :

“4. We have considered the submissions made from both sides. We have also perused various papers placed on record. In this case, in the course of survey, it was found that the assessee was having excess stock to the tune of Rs.15 lakh .and a specific question was .raised in the course of recording of statement that - Do you keep the stock of raw materials and finished goods as well in respect of all the business concerns stated by you. Shri M.K. Tandon, father of the assessee answered - "No. We do not have any system of keeping the stock. Separately. All the items of the stock belong to the different firms are kept combined and mixed". Finally it was stated that excess stock related to M/s Benu Exports own by the assessee. Learned CIT (A) has based his decision primarily on this statement of the assessee ignoring the facts that the assessee was not maintaining separate stock register for all the concerns that at the time of survey assessee has surrendered the amount of Rs.15 lakhs voluntarily and had handed over 3 cheques of the following amounts:

- 1. Rs.1,80,000 - September 15, 1995.*
- 2. Rs.1,80,000 - September 15, 1995.*
- 3. Rs.2,46,000 - March, 1996*

And that on these facts, the AO has drawn a conclusion that the assessee's explanation for not depositing the cheques on the plea that the excess stock found in the course of survey related to Benu Exports, is an after thought. If the said stock pertains to export division, the onus was on the assessee to prove the same. These fact has also been ignored by the learned CIT (A). Further, the learned CIT (A) has erred in holding that the department was expecting the assessee to do the impossible and that there is a prima facie evidence furnished by the assessee to substantiate his contention.

The stock found was mainly of fabrics and not of garments and that Benu Exports, exports only garments and not fabrics whereas the other proprietary concern of the assessee, whose stocks were admittedly found at the premises was not doing any export business, but was only supplying to the exporters. Further, how the excess stock was generated had not been proved by any evidence. The submission of the assessee before the A.O. that excess stock was generated on account of low consumption of fabric garments for the purpose of export out of India pertains to the difference between what is taken as consumed as per the standard formula generally applied for manufacturing the garments than actually consumed. Had this fact been correct, the assessee could have explained the same at the time of survey and could not have issued post dated cheques. Under these circumstances, we are of the view that the reply of the assessee in the course of assessment and submission made before CIT (A) are nothing but an afterthought which cannot be endorsed. In this view of the matter, we are unable to endorse the decision of the learned CIT (A). The same is reversed and the order of the AO is restored.”

The appellant in the memorandum of appeal argues that the Assessment Officer failed to give reasons to substantiate that his stand was an afterthought. It was further submitted that the Assessment Officer did not make any inquiries to call for the documents from the assessee, after he had disclosed that the excess stock was his income from exports. It was thus stated that the excess stock in fact had belonged to M/s Benu Exports which is

entitled to claim it appropriately in its income tax returns under Section 80HHC and correspondingly the assessee could claim a deduction in that regard. It was further emphasized that M/s Benu Exports has income only from export sales and if the explanation given is accepted, the addition is unsustainable.

The statement made by Shri M.K. Tandon – which was accepted by the assessee in writing – at the time of the survey categorically stated that the stock was excess and that it was reflected in the books of accounts. The ITAT perceptively observed that M/s Benu Exports was in the business of selling readymade garments to overseas buyers; the excess stock was in respect of fabrics and not garments. Furthermore, the plain admission in the circumstances of the case could not have been wished away in the manner that the assessee admitted. Undoubtedly, the CIT (A) accepted the plea that the Assessment Officer was under a further duty to substantiate the addition as excess stock. The recent decision of the Supreme Court in *Commissioner of Income Tax, Chennai v. S. Ajit Kumar*, AIR 2018 SC 2930 : (2018) 404 ITR 526 (SC), has stated that even the statement or material or evidence collected in the course of a survey is relevant for completing the assessment.

In the present case, the statement was corroborated by the excess stock, which was discerned at the time of survey. In fact, the maker of the statement categorically wished to surrender the

amount. In this, the assessee confirmed the statement in writing. In these circumstances, this court is of the opinion that there is no error in the finding recorded in the impugned order which merely set aside the finding of the CIT (A). The findings of the ITAT, are based upon factual inferences drawn from the facts on the record. There is no legal infirmity in the deductions made, vis-à-vis the additions brought to tax by the Revenue.

For the foregoing reasons, the question of law framed is answered against the assessee and in favour of the Revenue. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 30, 2018

aj