IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 13.12.2019
ITA-5-2018 (O&M)

Pr. Commissioner of Income Tax-I Ludhiana
... Appellant

vs.

M/s Vardhman Yarns & Threads Ltd Chandigarh Road,Ludhiana
.. Respondent

ITA-27-2018 (O&M)

Vardhman Yarns and Threads Ltd ... Appellant

vs.

Commissioner of Income Tax, Ludhiana .. Respondent

ITA-6-2018 (O&M)

Pr. Commissioner of Income Tax-I Ludhiana
... Appellant

vs.

M/s Vardhman Yarns & Threads Ltd Chandigarh Road,Ludhiana
.. Respondent

ITA-321-2019 (O&M)

Pr. Commissioner of Income Tax-I, Ludhiana
... Appellant

vs.

M/s VTL Investment Ltd. (Formerly Known as Vardhman Threads Ltd.) Vardhman Complex, Chandigarh Road, Ludhiana.
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Rajesh Katoch, Advocate with
Ms. Pridhi Jaswinder Sandhu, Advocate
for the appellant(s) in
ITA Nos. 5, 6 of 2018 and ITA-321-2019 and
for the respondent in ITA-27-2018.

Ms. Radhika Suri, Senior Advocate with
Mr. M.S.Kanda, Advocate
for the appellant in ITA-27-2018 and
for the respondent(s) in ITA Nos. 5, 6 of 2018 and
ITA-321-2019.

AJAY TEWARI, J. (ORAL)

1. This is group of four appeals, three has been preferred by the Revenue and one by the Assessee.

2. ITA No.5 of 2018 has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 13.07.2017 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh, in ITA No. 569/Chd/2012 for the A.Y.2008-09.

3. ITA No.27 of 2018 has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 13.07.2017 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, in ITA No. 1159/Chd/2013 for the A.Y.2009-10.

4. ITA No.6 of 2018 has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 13.07.2017 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh, in ITA No. 02/Chd/2014 for the A.Y.2009-10.

5. ITA No.321 of 2019 has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 11.12.2018 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh, in ITA No. 762/Chd/2009 for the A.Y.2006-07.

6. For the sake of convenience, facts are being extracted from ITA No.5 of 2018.

7. The brief facts relating to the issues are that the assessee had earned interest income from the security deposit made with the Electricity Board (HPSEB). The Assessing Officer treated the said interest income as 'income from other sources' and did not allow the set off of the same against the interest expenditure incurred by the assessee on the loan amount

obtained from the banks for business purposes. The Assessing Officer disallowed the claim of the assessee for treating the said income as 'business income' and further to include the said income into the eligible claim for deduction under Section 80IC of the Income Tax Act, 1961. Assessee assailed the order of the Assessing Officer on this issued before CIT (A), but remained unsuccessful.

8. The following questions have been raised in ITA No. 5 of 2018:-

> *"1. That the Hon'ble ITAT has erred in law and facts in directing the AO to consider interest income received by the assessee on the delayed payments from customers and suppliers as 'Business Income' instead of 'Income from Other Sources' as considered by the AO.*
>
> *2. That Hon'ble ITAT has erred in law and facts in allowing deduction u/s 80IC by holding, that process undertaken by the assessee is a manufacturing activity ignoring the facts that conversion of yarn into thread does not amount to manufacturing as it does not bring into existence as new or distinct product and further ignoring the decision of Hon'ble Supreme Court in the case of CIT Vs. Emptee Ply Yarn (P) Ltd., in Civil Appeal No. 786 of 2010 dated 20.01.2010, wherein it has been held that twisting and texturising of yarn would not constitute 'manufacturing' in every case."*

9. Learned counsel for the Assessee has referred to the judgments of this Court in case titled as ***Phatela Cotgin Industries Pvt. Ltd. vs. Commissioner of Income Tax*** wherein it was held that in such a case where there is provision in the contract for interest on the delayed payment of outstanding balance, any delayed payment and interest thereon would be constituted as income from business and not income from other sources.

10. Learned counsel for the Revenue has argued that actually in that case, an appeal could not be carried to the Supreme Court because of lower tax effect. However, he has not been able to cite any judgment to show or give any reason why the proposition laid down by the Bench in that case could not be followed.

11. In the circumstances, we hold question No.1 against the Revenue and in favour of the Assessee.

12. As regards the question No.2, the contention of learned counsel for the Revenue is that metamorphosis of yarn into thread is not manufacturing but process.

13. In this connection, learned Senior counsel appearing on behalf of the Assessee has relied upon the judgment dated 20.01.2010 rendered by the Supreme Court in Civil Appeal No. 786 of 2010 titled as ***Commissioner of Income Tac, Mumbai vs. Emptee Poly-Yarn Pvt. Ltd.*** and particularly para 7 thereof which is reproduced hereinbelow:-

> *"Having examined the process in the light of the opinion given by the expert, which has not been controverted, we find that POY is a semi-finished yarn not capable of being put in warp or weft, it can only be used for making a texturized yarn, which, in turn, can be used* in the manufacture of fabric. In other words, POY cannot be used directly to manufacture fabric. According to the expert, crimps, bulkiness etc. are introduced by a process, called as thermo mechanical process, into POY which converts POY into a texturized yarn. If one examines this thermo mechanical process in detail, it becomes clear that texturising and twisting of yarn constitutes 'manufacture' in the context of conversion of POY into texturized yarn. At this stage, we may also reproduce, hereinbelow, para 10 of our judgment in the case of C.I.T. v. Oracle Software India Ltd., reported in MANU/SC/0040/2010: 2010 (1) SCALE 425.
>
> > "The term "manufacture" implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and

> manipulation. However, this test of manufacture needs to be seen in the context of the above process. If an operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/process fall's within the meaning of the word "manufacture"."

14. It is not disputed that the yarn which has been used by the Assessee cannot be utilized, for instance for threading purpose. Resultantly, it falls within the definition of manufacturing. Question No.2 is answered against the Revenue and in favour of the Assessee.

15. Consequently, the appeals filed by the Revenue are dismissed.

16. Since the appeals filed by the Revenue are dismissed, learned senior counsel appearing for the Assessee states that the appeal bearing ITA No. 27 of 2018 has been rendered infructuous and the same may be disposed of as such.

17. Consequently, ITA No.27 of 2018 is disposed of as having been rendered infructuous.

18. Since the main case(s) is decided, pending application(s), if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

13.12.2019
smriti

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No