

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITA/63/2011

SIDHANT LEATHER EXPORTS PVT. LTD.

-Versus-

COMMISSIONER OF INCOME TAX, KOLKATA
- IV

Appearance:

Mr. J.P. Khaitan, Sr. Adv.

Ms. Swapna Das, Adv.

Mrs. Anupa Banerjee, Adv.

...for the appellant.

Mr. Tilak Mitra, Adv.

. . .for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th February, 2023

The Court : This appeal by the assessee under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 31st August, 2010 passed by the Income Tax Appellate Tribunal, B - Bench, Kolkata (the 'Tribunal') in ITA No.63/Kol/2010 for the assessment year 2006-07.

This appeal was admitted on 25th January, 2011 on the following substantial questions of law:

"(a) Whether the Tribunal below committed substantial error of law in ignoring the evidence as regards leather consumption and production of finished goods in its record and also forming part of the assessment record which was before the Commissioner of Income Tax (Appeals) on the ground of non-submission of such evidence before the Commissioner of Income Tax (Appeals) which was unnecessary.

(b) Whether the Tribunal below committed substantial error of law in estimating the production/sale of finished goods on the basis of its order for assessment year 2004-05, which is the subject matter of challenge before this Court in ITA No. 781 of 2008, and its purported finding as regards unrecorded production/sale of finished goods and sustained in addition to Rs. 1,12,09,000/- on account of leather consumption are perverse.

(c) Whether the Tribunal below committed substantial error of law in upholding the disallowance of Rs. 8,86,381/- out of expenditure on repairs and maintenance made upon comparison of expenditure under the head for the preceding year and the turnover figures for the two years without identifying any defect in the books of accounts, bills and vouchers produced in support of the expenditure and its purported findings in that regard are arbitrary and perverse."

We have heard Mr. J.P. Khaitan, learned senior standing counsel, assisted by Ms. Swapna Das and Mrs. Anupa Banerjee,

learned advocates for the appellant/assessee and Mr. Tilak Mitra, learned counsel appearing for the respondent/revenue.

The assessee is engaged in the business of manufacture and export of leather goods for the assessment year under consideration. The assessee filed its return of income on 30th November, 2006 disclosing a total income of Rs.24,14,440/-. The return was processed and the case was selected for scrutiny. The assessee produced various details including the quantitative details of stock of finished leather and raw material consumption of the same and details of production. After analysing the details and documents produced, the assessing officer was of the prima facie opinion that there is a discrepancy and irregularity in respect of consumption of finished leather and resultant production of finished goods. Accordingly, a show cause notice dated 28th November, 2008 was issued to the assessee. The assessee with regard to the quantitative details of stock stated that the consumption of raw materials depends on the quality of leather items produced. Further, it was stated that during the year under review, mostly old stocks have been used, most of the items produced are of various shapes in which case there was heavy wastage. The assessing officer as could be seen from the assessment order dated 30th December, 2008 does not examine the documents and details furnished by the assessee but largely was guided by the figures relating to the leather consumption during

the last three previous years starting from 2002-03 to 2003-05. Considering those details, the assessing officer has embarked upon a fact finding exercise of his own accord and has arrived at a figure and has come to a conclusion based on such figure that certain quantity of production of goods has not been disclosed in the books as well as the sale price of the same and, therefore, it is held that such production is outside the regular books of accounts of the assessee. Accordingly, a sum of Rs.3,55,67,235/- was added to the total income of the assessee.

The assessee carried the matter on appeal contending that the assessing officer was not justified in alleging undisclosed stock without any materials or evidence to support the said allegation. The CIT(A) considered the case of the assessee along with the assessment records and held that no details have been produced by the assessee with regard to the quantity of the leather consumed. The assessee carried the matter on appeal to the learned tribunal. The learned tribunal called for the assessment records as well as the records of the CIT(A) but, however, concurred with the CIT(A) on the ground that the assessee has not produced any evidence from which the yielded figure as well as the figure of wastage could be worked out. In our considered view, a fundamental error has crept in during the course of the assessment proceedings as pointed out earlier in response to the show cause notice dated 28th November, 2008 with regard to the quantitative details of stock. The

assessee's specific case was that from the materials already produced before the assessing officer it is clear that the consumption of raw materials would depend on the quality of leather and items produced and that during the year under review they had used old stock and most of the items are small things of various shapes in which case there was heavy wastage. If such stand of the assessee is not disputed by the assessing officer that the assessee had produced details including quantitative details of stock of finished leather and raw materials consumption of the same and details of production, the assessing officer was duty bound to examine those details and documents and come to a conclusion. However, those details have been brushed aside and what derived in the mind of the assessing officer were the figures for the three earlier assessment years. This, in our opinion, could not have been done by the assessing officer ignoring the materials and documents produced by the assessee about assessment year under consideration.

The CIT(A) also committed a similar error in not advertng to the records which are germane to the assessment year under consideration and largely swayed by the opinion of the assessing officer who committed an error by determining the quantity of wastage based on the production figures for the previous year. There is nothing on record to indicate that there was suppression of materials by the assessee nor there is anything to indicate

that the wastage as mentioned by the assessee for the year under consideration could not have been shown and those figures were neither examined nor rejected. One more important factor which needs to be taken note is that before the CIT(A) the assessee placed bunch of documents which were comparative chart of gross profits for the assessment years 2004-05 to 2007-08. It also produced the consumption report style-wise showing particulars of consumption of different types of products. The list of different types of articles producing during the assessment years 2005-06 to 2007-08 was also furnished along with the summary of export sales. Thus, if according to the assessee, different types of articles are produced for each assessment year which largely depends upon the orders which were placed by the assessee by overseas customers, the assessing officer was bound to consider those details as it is elementary principle that each assessment year is an independent unit. The learned tribunal also ignored this fact and was persuaded by the opinion drawn by the CIT(A) which had approved the estimation done by the assessing officer purely based upon the figures for the earlier assessment years and not in respect of the assessment year under consideration. It might have been a different case had the details and documents furnished by the assessee been examined and found to be incorrect or otherwise and thereafter the assessing officer embarked upon a fact finding exercise by referring to the facts and figures for the earlier

assessment year, it would have been another matter. However, the specific case of the assessee is that in none of the two years identical products have been manufactured and exported and, therefore, an independent examination of the goods ought to have been done by the assessing officer which the assessee was not noticed by CIT(A) or by the learned tribunal. Thus, the first issue which has been raised in substantial question of law (a) has to be necessarily answered in favour of the assessee.

The other two substantial questions of law (b) and (c) are also relatable to the same approach of the assessing officer as well as the CIT(A) and the learned tribunal. Once again, the two authorities and the tribunal state that there was nothing on record. However, the documents clearly show the details of repairs and maintenance have been clearly listed before the CIT(A) and, thus, if the facts relevant for the assessment year under consideration had been considered, such an error would not have occurred. In fact, the learned tribunal in its order records that the assessment records as well as the records of the CIT(A) were called for. Having done so, the tribunal does not record any finding on such records and details and documents produced by the assessee at the very inception during the course of scrutiny assessment. It proceeds to say that there is no evidence before the authorities below. This finding is factually incorrect and should be termed to be a perverse finding.

For all the above reasons, we are of the considered view that the learned Tribunal committed an error in affirming the order passed by the CIT(A). In the result, the appeal [ITA/63/2011] filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee.

. In the second substantial question of law there is a reference to the appeal filed by the assessee in ITA 781/2008 for the assessment year 2004-05. This appeal was allowed by this Court by judgment dated 7th February, 2023.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)