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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/781/2008
SIDHANT LEATHER EXPORTS PRIVATE LIMITED
VS.
COMMISSIONER OF INCOME TAX, KOLKATA - IV

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th February, 2023

Appearance :
Mr. J.P. Khaitan, Sr. Adv.
Mrs. Swapna Das, Adv.
....for appellant

Mr. Tilak Mitra, Adv.
...for the respondent

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act (the Act) is directed against the order dated May 30, 2008 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata (Tribunal) in I.T.A No. 2316(Kol)/2007 and C.O. No.1(Kol)/2008 for the assessment year 2004-05.

The appeal was admitted on the following substantial question of law :-

“Whether the Tribunal was justified in reversing the order of the Commissioner of Income Tax (Appeals) and restoring the addition of Rs.1,55,67,517/- made in the assessment on account of an arithmetical

mistake and its purported findings in that behalf are arbitrary, unreasonable and perverse ?”

We have heard Mr. J.P. Khaitan, learned senior counsel appearing for the appellant and Mr. Tilak Mitra, learned standing counsel for the respondent.

The issue is whether the Tribunal was justified in reversing the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] and restoring the addition of Rs.1,55,67,517/- made in the assessment excluding the case of the assessee that it was on account of an arithmetical mistake. In the notes to accounts submitted by the assessee, in no.1 under the column ‘Finished Leather’, the quantity of the opening stock was given as 1,35,289.67 sq.ft. The purchase was 14,85,636.25 sq.ft. While giving the total quantity, the figure of 14,85,636.25 sq.ft. was mentioned which, according to the assessee, was a totalling mistake and the figure 1,35,289.67 was inadvertently missed out, to be added to 14,85,636.25. In fact, during the course of assessment proceedings, the Assessing Officer issued notice dated 4th December, 2006 calling upon the assessee to explain the whereabouts of closing stock alleged to have been not disclosed in the account namely, 150181.42 sq.ft. of ‘Finished Leather’. The assessee submitted a reply on 18th December, 2006 stating that while calculating the consumption figure, a simple arithmetical mistake occurred in the quantitative analysis. It was stated that it is clearly written in the opening stock, add purchase. Therefore, 1,35,289.67 has to be added with 14,85,636.25 and the total would be 16,20,925.92 instead of 14,85,636.25. This explanation was received by the Assessing Officer on 20th December, 2006. However, while

completing the assessment, by order dated 29th December, 2006 under section 143(3), this explanation was not accepted by the Assessing Officer.

Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) and placed all records which were available and the learned Tribunal after going through the entire records held that the assessee has filed copy of the rectified TAR dated 3rd September, 2004 along with the auditor's certificate mentioning the original figure of available stock and the corrected figure of available stock drawing the figure of consumption in the original as well as the rectified report. Thus, the CIT(A) was convinced with the stand taken by the assessee that it is an arithmetical mistake in quantitative defects which were demonstrated before the CIT(A) duly supported by the auditor's certificate.

The revenue carried the matter on appeal before the learned Tribunal which had reversed the order by the CIT(A) by the impugned order. On going through the order passed by the learned Tribunal more particularly paragraph 7 we find that the learned Tribunal has committed factual error which would render the order perverse. The learned Tribunal had declined to take note of the revised tax audit report submitted by the assessee before the CIT(A) on the ground that it was given nearly three years after the original tax audit report. However, the learned Tribunal failed to note that this issue arose during the assessment proceedings itself and the assessing officer had issued notice dated 4th December, 2006 for which reply was given on 18th December, 2006 by the assessee which was rejected by the assessing officer while completing the

assessment. Therefore, to state that merely because the revised tax audit report was submitted later when the appeal was pending before the CIT(A), may not be a ground on which the learned Tribunal could have taken a different view. That apart, the learned Tribunal has observed that the assessee could not point out any mistake as claimed in the tax audit report during the course of the assessment proceedings. This also is factually incorrect as mentioned by us above as the matter was brought to the notice of the assessing officer during the course of the assessment. That apart, the learned Tribunal states that the copy of the remand report submitted by the assessing officer could not be produced by both parties. However, the learned Tribunal failed to note that the assessee was not furnished with the copy of the remand report called for by the CIT(A) but in the order passed by the CIT(A) the said report has been extracted in page 5 of the order passed by the CIT(A). In any event, the assessee was able to establish the factual position as to how it was a genuine arithmetical mistake. In the absence of any material to show that it was not a genuine arithmetical mistake, the tribunal erred in non-suiting the assessee on the ground that the mistake ought to have been detected earlier by the assessee itself. Thus, we are of the view that the conclusion arrived at by the tribunal for setting aside the order passed by the CIT(A) is incorrect as the learned tribunal has ignored the factual position which was available on record.

For the above reasons, the appeal filed by the assessee is allowed. The order passed by the learned tribunal is set aside and, consequently, the order

passed by the CIT(A) is restored and the substantial question of law is answered in favour of the assessee.

Accordingly, the appeal ITA/781/2008 stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)