HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-101-2022 (O&M)
Date of decision: 05.09.2023

Pr. Commissioner of Income Tax-1, Jalandhar ....Appellant

V/s.

M/s. Supertech Forgings (India) Pvt. Ltd. .....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Gauri Neo Rampal, Senior Standing Counsel for the appellant.

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Ritu Bahri, J.

1. The revenue has come up in appeal against the order dated 25.08.2021 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as 'the Tribunal') whereby appeal filed by the respondent M/s. Supertech Forgings (India) Pvt. Ltd. against the order dated 16.10.2018 passed by Commissioner of Income Tax (Appeals)-2, Jalandhar, for the Assessment Year 2010-11 had been accepted.

2. The respondent-company is engaged in the business of manufacturing of ACSR Conductors (Aluminium conductor steel reinforce), DPC Wire Strips (double paper covered wire), steels wire ropes, PVC cables and besides trading of M.S. Pipes, aluminium wire and allied products. The assessment had been framed u/s 143(3) on 12.06.2012 and the trading results were accepted by the department during complete scrutiny. However, certain other additions were made by the AO and later on the assessee approached CIT(A) who had provided part relief of Rs.3.50 lakhs out of the

total additions. Neither the department nor the assessee had filed appeal against the order of the CIT(A).

3. The case was reopened u/s 147 on 30.03.2017 on the basis of the information received by the AO from the investigation wing in the form of statement recorded in the case of Sh. Madan Lal Pahuja. In the reasons recorded, the AO had mentioned that the purchases made from Madan Lal Pahuja M/s. Shiv BholeKirpa Traders Rs.1.05 Cr., Lovy Steel and Allied Industries Rs.0.17 Cr and Jatinder Kumar, Proprietor Shree Nath Ispat Udhyog Rs.2.06 Cr. were bogus and as such there was escapement of income to the tune of Rs.4.26 Crores.

3. Reassessment proceedings were initiated under Sections 147/148 of the Income Tax Act, 1961. The respondent-assessee had made bogus purchases of Rs.4.26 crores by inflating the expenses and thereby suppressed the profits by Rs.4.26 crores for the AY 2010-2011.

4. The bogus purchases were reflected by the statements of Sh. Madan Lal Pahuja and Jatinder Kumar before the Investigating Wing, Ludhiana. The respondent-assessee filed objections to the notice under Section 148 of the Act, 1961. The Assessing Officer, being not satisfied with the assessee reply, disallowed the entire purchases amounting to Rs.4,26,93,470/- holding as unverifiable purchases from the following parties:-

Sr. No.	Name of the concern	Amount of purchases
1.	Madan Lal Pahuja M/s. Shiv bholeKirpa Trade, Shivpuri, Ludhiana	1.05 Cr
2.	Lovy Steel and Allied Industries, Sector 3, Gobindgarh	0.17 Cr
3.	Jatinder Kumar Shree Nath Ispat Udhyog, Gobindgar	2.06 Cr
4.	Shree Radhey Steel & Alloys	0.99 Cr
TOTAL		4.26 Cr

5. The respondent-assessee filed an appeal before the CIT(A). The CIT(A) upheld the additions on account of bogus purchases and the appeal was dismissed. Thereafter the respondent-assessee filed an appeal before the Tribunal. The Tribunal observed that the Assessing Officer had not applied his mind and merely relied upon the information received from the Investigating Wing and the statement of Sh. Madan Lal Pahuja. The said information was required to be corroborated and verified by the Assessing Officer. Admittedly, the Assessing Officer had completed the regular assessment under scrutiny on 18.06.2012 after examining books of account of the assessee and the appeal was allowed by the Tribunal on the following grounds:-

i. The same very information was available in the assessment record of the assessee company for the assessment year 2010-11 which was subject matter of scrutiny assessment and on the basis of this information, the assessment was completed and the additions were made. The same very information was admitted to be correct by the Assessing Officer. Hence, the Assessing Officer could not be permitted to change his opinion based on the same information in view of the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited [2010] 187 Taxman 312***.

ii. The Assessing Officer at one point was saying that purchases were made for Rs.4.26 Crores and on the other hand, against this figure, he was showing figure as Rs.3.28 Crores by showing details of three companies i.e. (1) Sh. Madan Lal Pahuja HUF Prop. M/s. Shiv BholeKirpa Traders, Shirnlapuri, Ludhiana, (2) M/s. Lovy Steel & Allied Industries, Dr. Bansal Clinic, Sector -3 C, Mandi Gobindgarh, (3) Sh. Jatinder Kumar Prop. M/s. Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh to show

Rs.1.05 Crores, Rs.0.17 Crores and Rs. 2.06 Crores (Rs. 3.28 Crores). Apart from the said parties, the Assessing Officer had made additions on account of the purchase made from M/s. Shree Radhey Steel & Alloys as well.

iii. The assessment order was passed on the basis of statement given by Sh. Madan Lal Pahuja on 07.01.2015 before the investigating wing. The said statement was received by the assessee on 08.12.2017 and the Assessing Officer was requested to permit the assessee to cross-examine Sh. Madan Lal Pahuja. However, Madan Lal Pahuja did not turn up for examination and cross-examination during the reassessment proceedings. In this backdrop, the statement recorded by the investigating wing could not form basis of investigation. It was the duty of the revenue to produce the witness namely Sh. Madan Lal Pahuja as the revenue was relying upon his statement.

iv. Once the Assessing Officer of Sh. Madan Lal Pahuja had accepted the sales made to the assessee in the assessment order dated 20.12.2017 passed under Section 143(3) read with Section 147 of the Act, then the said purchases (sale of Sh. Madan Lal Pahuja) could not be disputed by the Assessing Officer of the assessee. The Lower Authorities had not disputed that the purchases were made by the assessee from the same parties in subsequent assessment years i.e. 2011-12 & 2012-13 and the assessment orders were provided to the Lower Authorities. The assessment order was passed in the case of Sh. Madan Lal Pahuja by applying the GP Rate of 1.2% on total turnover of Rs.12.43 Crores. The sales were accepted by the department which were duly reflected in the VAT forms. Merely on account of the fact that vehicle numbers mentioned on some of the invoices were not matching could not be made a ground to initiate reassessment proceedings.

v. The total amount of seven bills for which the Assessing Officer had suspicion was for Rs.53,72,955/- only. The sale of the assessee had not been doubted by the department and only a fraction of the purchase of Rs.53,72,955/- was doubted. Hence, the entire purchase could not be added in the income of the assessee as per the decision of the Gujarat High Court in the case of ***Bholanath Poly Fab [315 ITR 290]***, even the GP on the amount of sale of Rs.53,72,955/- could not be added in the hands of the assessee as the sales made by Sh. Madan Lal Pahuja and others were accepted by the department in the assessment order passed under Section 143(3) of the Act.

6. An FIR had been registered against Madan Lal Pahuja on 13.09.2009. On 13.02.2023, learned counsel for the appellant sought time to get instructions whether any steps were taken with respect to the business transaction with bogus bills of Madan Lal Pahuja, who had been acquitted in the criminal trial. Today, learned counsel for the appellant informed that no steps were taken with respect to business transaction with bogus bills against Madan Lal Pahuja. In the present case, initiation of reassessment proceedings on the basis of the statement given by Madan Lal Pahuja and without giving assessee any opportunity of cross-examination were good grounds to allow the appeal of the assessee and does not require any interference as no substantial question of law arises for consideration in the present appeal. Hence, the instant appeal is dismissed.

7. Pending application stands disposed of.

(RITU BAHRI)
JUDGE

05.09.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No