2023:PHHC:139829-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

102 *2023:PHHC:139829-DB*

ITA Nos. 176 and 174 of 2021 (O & M)
Date of Decision: 02.11.2023

The Pr. Commissioner of Income Tax (Central), Ludhiana
.....Appellant(s)

Versus

M/s. Arora Iron & Steel Rolling Mills Pvt. Ltd. ....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

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

G.S.SANDHAWALIA, J. (Oral)

1. The present judgment shall dispose of two appeals i.e. ITA Nos.176 and 174 of 2021. Facts are being taken from ***ITA No.176 of 2021, The Pr. Commissioner of Income Tax (Central), Ludhiana vs. M/s. Arora Iron & Steel Rolling Mills Pvt. Ltd.***

2. ITA No.176 of 2021 has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 24.05.2021 (Annexure A-III) passed by Income Tax Appellate Tribunal, Chandigarh (in short 'the Tribunal') in ITA No. 1291/CHD/2019 for the assessment year 2015-16. Similarly, ITA No. 174 of 2021 has been filed for the assessment year 2016-17 against the order of even date passed by Income Tax Appellate Tribunal, Chandigarh. The Tribunal upheld the order of the Commissioner of Income Tax (Appeals)-1, Ludhiana dated 02.07.2019 (Annexure A-II) by noting that the Assessing Officer had made certain additions on account of disallowances

made in respect of unsecured loans obtained from 8 parties and certain unverifiable purchases. The deletion had been made by the Commissioner of Income Tax in respect of the said unsecured loans on the ground that the assessee had produced enough evidence on the file establishing the identity, credit worthiness of the loan creditors as well as the genuineness of the transactions. The Appellate Authority had accordingly appreciated the evidence on the file and observed that the Assessing Officer had wrongly observed that the purchase made was bogus in view of the specific evidences adduced by the assessee-company in this respect. Resultantly, the Appellate Authority came to the conclusion that there was no rationale on the part of the Assessing Officer in accepting the purchase and sale but rejecting the outstandings of such purchase.

3. The challenge before the Tribunal by the Revenue was that the Appellate Authority had taken on record additional evidence and the assessee's case did not fall within the exceptions laid down under Rule 46A(1) of the Income Tax Rules, 1962. It had been argued before the Tribunal that out of the 8 creditors in respect of which the additions were made by the Assessing Officer, the outstanding loan had been squared off in respect of 6 parties after paying due interest accrued thereupon. In respect of the remaining 2 parties, it was pleaded that the assessee had regular business transactions with them and upto date interest was paid upon the credit. It was brought to the notice of the Tribunal that all the necessary evidences like purchase bills alongwith the bank statements etc., were furnished and the assessee had produced ledger account in the books of respective creditors and all the bank accounts of the assessee had been duly reflected in the books of

the assessee. Therefore, the Appellate Authority having properly appreciated all the evidence had given the benefit and deleted the additions made by the Assessing Officer. The Tribunal recorded the following findings:-

> *"6. The Ld. DR could not rebut the above averments made by the Ld. Counsel for the assessee. Even the Id. DR could not point out to any additional evidences accepted by the CIT(A) in contravention of the provisions of rule 46(A) of the Income Tax Rules 1962.*
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> *7. The powers of the CIT(A) are coterminous with that of the assessing officer. The Ld. CIT(A) after considering the evidences on the file has deleted the impugned additions made by the assessing officer and even the department has not assailed the findings of the CIT(A) on merits. In view of the above discussion, we do not find any merit in the present appeal of the revenue and the same is accordingly dismissed.*
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> *8. Both the Ld. Representatives of the parties have submitted that the facts and issues involved in revenue' s appeal for AY 2016-17 bearing ITA NO. 1292/CHD/2019 are identical. In this appeal also, the revenue has not assailed the findings of the CIT(A) on merits but only accepting of additional evidence. Our findings arrived at in respect of ITA No 1291/CHD/2019, therefore, mutatis mutandis will apply to this appeal also.*
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> *In the result, both the captioned appeals of the revenue are here by dismissed."*

4. In the present appeal, the following substantial questions of law are sought to be raised:-

> *(i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in upholding the*

decision of Ld. Commissioner of Income Tax (Appeals) deleting the additions made on account of unsecured loans and unverifiable purchases, by accepting the additional evidences submitted by the assessee, without appreciating the fact that the case of the assessee does not fall under any of the exception laid down in Rule 46A(1) of the Income Tax Rules, 1962.

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in confirming the order of the Commissioner of Income Tax(Appeals) by holding that complete documents were submitted during the assessment proceedings regarding genuineness of unsecured loans and the purchases whereas the additional evidences submitted at the appellate stage were not provided to the Assessing Officer and the same were admitted by the Commissioner of Income Tax(Appeals) in violation of Rule 46A(3) of the Income Tax Rules, 1962.

(iii) Whether on the facts and in the circumstances of the case, the Hon'ble (ITAT was right in upholding the decision of the Commissioner of Income Tax (Appeals) who admitted additional evidences of the assessee in violation of Rule 46A(3) of the Income Tax Rules, 1962.

(iv) Whether the impugned order dated 24.05.2021, passed by the Hon'ble Income Tax Appellate Tribunal is erroneous in the eyes of law and deserves to be vacated and overruled."

5. On 09.02.2023, the co-ordinate Bench had passed the following order while adjourning the matter:-

"Learned counsel for the appellant seeks time to inspect the original documents produced before the Assessing Officer, which have been made basis to

answer in favour of the assessee and to allow the appeal by the Commissioner of Income Tax (Appeals)-1, Ludhiana. The Tribunal has observed in para 6 of the order dated 24.05.2021 (Annexure A-3) that the representative of the department did not rebut that these documents were not on the file of the Assessing Officer.

List on 29.03.2023.

A photocopy of this order be placed on the file of another connected case."

6. Thereafter on 25.07.2023, the following order was passed:-

Learned senior standing counsel for the appellant seeks time to place on record the zimni orders whether before the CIT appeals, any notice was given on the application for leading additional evidence.

Adjourned to 02.11.2023.

A photocopy of this order be placed on the file of another connected case."

7. Today also, counsel for the appellant is not in a position to place on record any material whether application for leading additional evidence had been filed or some additional documents were brought on record by the assessee.

8. We have also gone through the order of the Appellate Authority wherein the Appellate Authority came to the conclusion that the Assessing Officer had taken the shorter route of considering the purchase creditors to be bogus merely on the basis of their non-response verification letters issued under the provisions of Section 133(6). Resultantly, he set aside the action of the Assessing Officer since there was already specific material adduced by the company and came to the conclusion that there is no rationale in accepting the purchases and the sale, but rejecting the outstandings of such

purchases. In such circumstances, the addition of Rs.25,84,77,022/- was directed to be deleted.

9. A perusal of the order of the assessment would also go on to show that in his comments, at one place, the Assessing Officer has mentioned that the ITR is not legible and the bank statement is difficult to read and resultantly came to the conclusion that the creditworthiness and genuineness of transaction is not proved. Similar observations have also been made for rejecting the entries without any reasons given. The Appellate Authority thereafter has, thus, applied its mind to the material which was on record and had allowed the appeal. The said appeal was never contested on merits before the Tribunal but only on the technicality that there was additional evidence produced, which does not come forth from the above facts and circumstances and neither any material has been produced.

10. In such circumstances, the substantial questions of law which are sought to be raised apparently are not made out. Resultantly, finding no merit in the appeals, the same are dismissed.

(G.S. SANDHAWALIA)
JUDGE

02.11.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No