

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 28.03.2023

1. **ITA No.140 of 2013 (O&M)**

Commissioner of Income Tax, Rohtak ...Appellant

Vs.

M/s Crystal Phosphates Ltd. ...Respondent

2. **ITA No.141 of 2013 (O&M)**

The Commissioner of Income Tax, Rohtak ...Appellant

Vs.

M/s Crystal Phosphates Ltd. ...Respondent

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

Present: Ms. Pridhi Jaswinder Sandhu, Senior Standing Counsel,
for the appellant(s).

Mr. Pankaj Jain, Senior Advocate,
with Mr. Sachin Bhardwaj, Advocate,
for the respondent(s).

Ritu Bahri, J. (oral)

This judgment shall dispose of ITA No.140 and 141 of 2013 together as common questions of law and facts are involved in both the appeals. For reference, facts are being taken from ITA No.140 of 2013.

Appellant-revenue has come up in appeal against the order dated 02.11.2012 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi in ITA No.3630/Del/2009 dated 02.11.2012, for the assessment year 2006-07.

Brief facts of the case are that the respondent-assessee filed the

case was selected for scrutiny. Assessment under Section 144 of the Income Tax Act was completed on 24.12.2008 by making the following additions:-

“(1) During the assessment proceedings, the identity and creditworthiness of the parties subscribed share capital remained unproved and the genuineness of the transaction was also unproved, therefore, the capital of Rs.55,00,000/- was treated as income from undisclosed sources of the assessee’s company.

(2) No information/details in respect of the share application money amounting to Rs.51,50,000/- received by the company was furnished. Hence, in the absence of records the same was treated as unexplained share application money and the same was added to the declared total income.

(3) Addition of Rs.1,45,57,286/- was made as the assessee failed to prove the identity, creditworthiness of the parties from whom the alleged loans were declared.

(4) No evidence was furnished to prove the genuineness of advances of Rs.10,66,96,566/- from customers, as such out of the said amount, an amount of Rs.2,00,00,000/- was added to the returned income of the assessee as income from undisclosed sources.

(5) Addition of Rs.60,000/- on account of interest charged on investment in shares.

(6) The assessee has diverted its borrowed funds to non-interest bearing advances to the tune of Rs.1,58,86,441/-. As such interest of Rs.19,06,373/- worked out @12% on interest free advances was disallowed.

(7) The assessee had debited expenses on account of charity and donation of Rs.66,203/- and gift expenses of Rs.42,530/-, totaling to Rs.1,08,733/-, which were disallowed being not admissible as per provisions of the IT Act.

(8) An addition of Rs.5,00,000/- is made out of total Foreign Travelling Expenses of Rs.9,87,601/- in its P & L Account as no

evidence regarding the person travelled, sector travelled, parties contracted and business procured was available on record.

(9) An addition of Rs.1,64,890/- was made as no evidence on record regarding the Subscription & Membership fees paid to the institution/organizations eligible for deduction under Section 80-G.

(10) The assessee-company had claimed total expenses of Rs.1,97,72,54,772/- under different heads in the P & L Account. No details were furnished by the assessee to prove the genuineness of these expenses. Moreover, the expenses under various heads were allowable only when TDS was deducted and deposited in the Government account. Since no information was furnished by the assessee nor any evidence is available on record to substantiate the claim of the assessee as genuine, the expenses of Rs.2,00,00,000/- not relating to the business were disallowed and added to the income of the assessee.”

Against the said order, the assessee-respondent filed an appeal before the Commissioner of Income Tax (Appeals), who vide order dated 20.07.2009, deleted the additions mentioned at Sr. Nos.1, 2, 3, 4 and 5 and partially confirmed the addition of Rs.4,00,000/-, out of Rs.19,06,373/- mentioned at Sr. No.6, Rs.42,530/- out of Rs.1,08,733/- mentioned at Sr. No.7 and Rs.25 lakhs out of Rs.2,00,00,000/- mentioned at Sr. No.10. The CIT (A) had further enhanced the addition of Rs.5 lakhs to Rs.5,11,538/- mentioned at Sr. No.8.

Against the aforesaid order, the department as well as the assessee filed appeal(s) before the Income Tax Appellate Tribunal, New Delhi. The appeal of the assessee was disposed of vide order dated 02.11.2012 by quashing the notice under Section 143 (2) of the Act as well

as the assessment framed by the Assessing Officer. On the other hand, the

appeal filed by the revenue-department was dismissed. Hence, the present appeal.

Vide order dated 25.03.2014 passed by this Court, the present appeal was admitted for determination of the following substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case, Hon’ble ITAT, New Delhi was right in law in quashing the notice as well as assessment made in the case of the assessee by holding that instructions issued by CBDT for selection of cases for scrutiny for the financial year 2007-08 are not shown to have been satisfied for assumption of jurisdiction, whereas the case of assessee was rightly picked up for scrutiny as per guidelines contained in CBDT instruction for selection of cases for scrutiny?

(ii) Whether Hon’ble ITAT, New Delhi was right in law in quashing the notice as well as assessment made as the assessment for the assessment year 2004-05 was framed by making disallowance of Rs.5,60,207/- and the appeal of the assessee was pending before CIT (A) and as per the CBDT instructions contained in Scrutiny Guidelines for F.Y. 2007-08 in clause 2 (v) (b) provided that all cases in which an appeal was pending before the CIT (A) against an addition/disallowance of Rs.5 lakhs or above, or the Department had filed an appeal before ITAT against the order of the CIT (A) deleting such an addition/disallowance and an identical issue arising in the current year be taken for scrutiny; the Hon’ble ITAT misinterpreting the said instructions wrongly holding that the instructions issued by CBDT are not shown to have been satisfied for assumption of jurisdiction?

(iii) Whether the Hon’ble ITAT, New Delhi was right in law in quashing the notice as well as assessment made in the case of assessee without adjudicating upon the issues raised by the Revenue as well as the assessee by way of appeals filed before the Hon’ble Tribunal?

The short question for consideration in the present appeals is, “whether as per CBDT instructions/guidelines, the case of the assessee was covered to be picked up for scrutiny, especially keeping in view that for the assessment year 2007-08, the income was 30% more than the total income

Learned counsel for the respondent(s) has referred to the judgment passed by the Andhra Pradesh High in **Commissioner of Income Tax vs. Smt. Nayana P. Dedhia**, (2004) 270 ITR 572 (AP), whereby it was held that the scrutiny assessment, if it is in violation of the press release by the CBDT, is invalid. While deciding the said case, reference was made to the judgment passed by Hon'ble the Supreme Court in **UCO Bank vs. CIT** (1999) 154 CTR (SC) 88, wherein the scope of circulars issued by the CBDT under Section 119 (1) of the Income Tax Act, 1961 was examined. It was held that the CBDT, under the above said provisions, from time to time, could issue such orders, instructions and directions to other IT authorities as it may deem fit for the proper administration of the Act and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. The power is given to the Board for the purpose of proper and efficient management of the work of assessment. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities. Hon'ble the Supreme Court in **UCO Bank's** case (supra) further held as under:-

“(a). the authorities responsible for administration of the Act shall observe and follow any such orders, instructions and directions of the Board;

(b) such instructions can be by way of relaxation of any of the provisions of the section specified therein or otherwise;

(c)the Board has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions by issuing circulars in exercise of its statutory powers under Section 119 of the IT Act;

(d) the circulars can be adverse to the IT Department, but still are binding on the authorities of the IT Department, but cannot be binding on the assessee, if they are adverse to the assessee;

(e)the authority which wields the power for its own advantage under the Act, has a right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law by issuing instructions in terms of Section 119 of the Act.”

Hence, for all intents and purposes, the authorities cannot select any case for detailed scrutiny against the circulars issued by the Board. In **Smt. Nayana P. Dedhia's** case (supra), the revenue had come up in appeal in a case, where the assessee had completed a project of construction. After completing the project in the assessment year 1996-97, the assessee, after into consideration the profit offered in the assessment year 1993-94 and 1994-95, offered the balance profit for taxation in the assessment year 1996-97. The Assessing Officer rejected the books of account maintained by the assessee and referred the matter to the Departmental valuation cell for ascertaining the cost of the construction. The valuation cell determined the value of the property at Rs.2,02,15,924/- as against the declared value of Rs.1,43,74,515/-. The Assessing Officer, after making adjustments to the valuation report, completed the assessment under Section 143 (3) of the Income Tax Act by making an addition of Rs.55,93,115/- being the difference in the cost of construction declared by the assessee and as determined by the valuation cell. Against the order of the Assessing Officer, an appeal was preferred by the respondent, which was rejected. After rejection, the appellant-assessee preferred an appeal before the Tribunal, which was allowed. The Tribunal had allowed the appeal of the assessee

keeping in view the circular issued by way of press release dated 12.03.1996, conditions of which reads as under:-

- (a) the total income for both the assessment years should exceed the basic exemption limit;
- (b) the total income for the assessment year 1995-96 should not exceed Rs.5 lakhs; and
- (c) tax is fully paid for the assessment year 1996-97 before the return is filed.”

All the conditions of the circular were fulfilled by the assessee and as per CBDT circular, the case of the assessee could not be re-opened for scrutiny. The appeal filed by the revenue was dismissed by the High Court by referring to the judgment passed by Hon’ble the Supreme Court in **UCO Bank’s** case (supra).

To the same effect is the judgment passed by the Calcutta High Court in **Amal Kumar Ghosh vs. Assistant Commissioner of Income Tax & others**, (2014) 105 DTR 351 (Cal), wherein it has been held that during the financial year 2004-05, the selection of case for scrutiny had to be completed within 3 months of the date of filing of return. In that case, return was filed on 29.10.2004 and selection of case for scrutiny was done on 06.07.2005 i.e. the beyond the period of three months. It was held that instructions of CBDT were violated, as the circulars were binding upon the department. The Department was bound by that standard and could not act with discrimination. Finally, the appeal was allowed.

In the facts of the present case, the Tribunal has followed the guidelines issued by Hon’ble the Supreme Court as stated above and has observed that with respect to the notice dated 27.11.2007. The appellant submitted reply on 18.01.2008 and had taken up the issue with regard to jurisdiction of the assessing authority to issue such notice. Hence, the

Tribunal has rightly observed that it cannot be held that the appellant had acquiesced to the jurisdiction. As per CBDT instructions, the burden was on the authority assuming jurisdiction to show and establish that such instructions have been duly complied and satisfied in letter and spirit. Since notice under Section 143 (2) of the Act was not in terms of the instructions of the CBDT, both the notice and the assessment framed were held to be without valid jurisdiction and were accordingly, quashed.

Since, in the present case, the question of jurisdiction was to be decided first by the Assessing Officer, which has not been done, the assessment order was quashed being against the instructions of the CBDT.

After going through the impugned judgment(s), this Court is of the view that in this case, the instructions issued by the CBDT have not been complied with in letter and spirit. The Tribunal has rightly allowed the appeal(s) of the assessee by appreciating the facts in the right perspective. Moreover, the Revenue has not led any cogent and convincing evidence to prove its case. No substantial question of law arises for consideration in these appeals.

Resultantly, finding no merits, the present appeals i.e. ITA No.140 of 2013 and ITA No.141 of 2013 are dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

28.03.2023
ajp

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