IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.52 of 2016 (O&M)
Date of decision: 23.03.2023

Pr. Commissioner of Income Tax-1, Chandigarh

.....Appellant

Versus

M/s S.R. Industries Ltd.

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE AMARJOT BHATTI

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

Mr. Sahil Kumar, Advocate, for Mr. Nitin Kaushal, Advocate, for the respondent.

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Ritu Bahri, J.

The instant appeal, under Section 260A of the Income Tax Act, 1961, has been filed against the order dated 03.09.2015 (Annexure A-5) passed by the Income Tax Appellate Tribunal, Chandigarh, in ITA No.1125/CHD/2014, in respect of the assessment year 2007-08, whereby appeal filed by the respondent-assessee against the order dated 03.11.2014 passed by the Commission of Income Tax (Appeal), has been allowed.

The respondent-assessee company is a manufacturer and exporter of terry towel. For the assessment year 2007-08, the assessee filed its return of income at a total income of 'NIL' claiming loss of Rs.86,40,279/-. Consequently, assessment under Section 143 (3) of the Act (Annexure A-1) was framed on the assessee and disallowance on account of interest paid on capital work in progress was made under Section 36(1)(iii) of the Act on account of fact that the assessee had shown an amount of Rs.6,43,261/- as capital work in progress in the balance sheet. Thereafter, reassessment proceedings under Section 147 of the Act were initiated by the Assessing Officer on the ground that there was escapement of income of the assessee to the tune of Rs.73,44,534/-. The assessee's stand before the Assessing Officer was that it had capitalized all interest on loans taken for the expansion of business during the year. It was further submitted that it had put to use its assets on 21.08.2006 and all interest paid up to that date, which amounted to Rs.18,77,665/-, was charged to pre operative expenses. No part was claimed as revenue expenditure. Thus, the assessee had claimed that no interest was disallowable under Section 36(1)(iii) of the Act. The Assessing Officer, after calculating whole of the amount, passed the order dated 19.12.2011 (Annexure A-2) by observing as under:-

> "6.4. Therefore, an amount of Rs.68,16,891/- is to be disallowed and added back to income of assessee under Section 36(1)(iii) of the Income Tax Act, 1961. However, the assessee has already capitalized an interest of Rs.18,77,665/- under the head preoperative expenses and the AO had disallowed interest of Rs.77,191/- vide order dated 10.12.2008. Thereafore, net interest that comes to Rs.48,62,035/- is hereby disallowed and added back to the income off the assessee."

Thereafter, a notice under Section 154 of the Income Tax Act, 1961, was issued to the assessee on 09.11.2012. The Assessing Officer passed the order dated 04.06.2013 (Annexure A-3) disallowing the excess depreciation claimed amounting to Rs.1,94,75,052/- on account of machinery being put to use in March, 2007. In this order, it was stated that the assessee had added assets of Rs.13,33,68,281/- during the year under consideration and they were put to use only in February, 2007, interest of which worked out to Rs.68,16,891/-, which was capitalized upto February, 2007 and was required to be added to the cost of the assets. The assessee had claimed full depreciation and additional depreciation of substantial part of addition, which otherwise was allowable @50% due to less than 6 months use. Depreciation on plant, machinery and electrical installation was reworked. The assessee was allowed excess depreciation of Rs.1,94,75,052/-. This depreciation was found to be in excess and in this backdrop, notice under Section 154 of the Act was issued. The reply of the assessee was not accepted and the Assessing Officer disallowed the excess depreciation. Against this order, the assessee went in appeal before the CIT (A), which upheld the order of the Assessing Officer (Annexure A-3) and dismissed the appeal of the assessee. This order was challenged by the assessee before the Tribunal.

The Tribunal, vide order dated 03.09.2015 (Annexure A-5), held that proceedings initiated under Section 154 of the Act were bad in law and quashed the order dated 03.11.2014 passed under Section 154 of the Act by observing that the assets may have been installed and ready for use earlier as claimed by the assessee, was clearly a debatable issue and required further investigation, which is not permissible under Section 154 of the Act. Proceedings under Section 154 of the Act were held to be bad in law and were quashed. Finally, the order passed by the CIT(A) was set aside. By way of present appeal, the revenue has challenged the order passed by the Tribunal.

Learned counsel for the appellant has argued that the Tribunal had rightly referred to the finding given by the Assessing Officer and details provided by the assessee. During the assessment proceedings, monthly details of Capital Work in Progress submitted by the assessee showed that WIP continued to exist throughout the year upto February, 2007 and the assets were put to use for less than 180 days. Keeping in view this evidence, proceedings under Section 154 of the Act were rightly initiated as this finding of fact was based upon the evidence given by the assessee himself and it did not require further investigation. This issue was neither debatable nor required further investigation. She has also referred to the observation made by the Tribunal that the Fixed Assets Register for the financial years 2005-06 and 2006-07 showing the date of purchase, installation and date of put to use of these assets, certificate of M/s Power Tracks approved Chartered Engineers, to prove the date of installation of the new plant and machinery, certificate of Central Excise Department regarding installation of new plant and machinery, showed that the assets were installed by August, 2006. She has further argued that since all this documents were there before the Assessing Officer at the time of re-assessment proceedings, the Tribunal has wrongly set aside the orders passed by the authorities under Section 154 of the Act, as no further investigation was required.

Learned counsel for the respondent, on the other hand, has argued that the mere fact that capital WIP was capitalized in the month of February does not settle the issue of claim of depreciation. In this backdrop, the issue is debatable and requires further investigation, which is not permissible under Section 154 of the Income Tax Act. Therefore, the impugned order passed by the Tribunal does not require any interference.

Heard, learned counsel for the parties.

In the present case, on the basis of evidence given by the assessee-respondent with respect to the installation of machinery, the assessee had been allowed depreciation of Rs.1,94,75,052/-. A perusal of the order dated 04.06.2013 (Annexure A-3) passed under Section 154 of the Act shows that the assessee had claimed and allowed full depreciation and additional depreciation of substantial part of addition, which was allowable @50% as the assessee had put these assets to use in February, 2007 and the period of less than 180 days for the assessment year 2007-08. Hence, the depreciation allowable was only to the extent of 50%. As per the order dated 19.12.2011 (Annexure A-2) passed under Section 147 of the Act, the assessee had claimed benefit of depreciation for the whole year for purchase of new machinery. Reference was made to Section 36(1)(iii) of the Act, which provided that any amount of interest paid in respect of capital borrowed for acquisition of an asset, shall not be allowed as deduction till the date on which, such asset was first put to use. As per the assessee itself, the machinery purchased was put to use in February, 2007 and this fact was not noticed by the Assessing Officer while passing the impugned order dated 04.06.2013 (Annexure A-3). In the said order, 100% depreciation was given by taking the date of putting the machinery to use by 21.08.2006. The assessee had produced the Fixed Assets Register for the financial years 2005-06 and 2006-07 showing the date of purchase, installation and date of put to use of these assets; certificate of M/s Power Tracks approved Chartered Engineers, to prove the date of installation of the new plant and machinery; and certificate of Central Excise Department regarding installation of new plant and machinery, which showed that the assets were installed by August, 2006 and details of WIP provided by the assessee showed that the above said machinery was capitalized in the month of February, 2007 and it had been put to use in less than 180 days.

The above said evidence was sufficient to return a finding of fact that the claim on depreciation had to be allowable at 50% due to less use during the assessment year in question. There was no occasion to conduct further investigation with regard to putting of use of this machinery for less than 180 days as the evidence before the Assessing Officer showed that the machinery had been put to use in February, 2007, as per the details provided by the assessee. In these circumstances, it is held that proceedings under Section 154 of the Act were correctly initiated.

In view of the above discussion, the present appeal is allowed and the impugned order dated 03.09.2015 (Annexure A-5) passed by the Income Tax Appellate Tribunal, Chandigarh, is set aside.

(RITU BAHRI)
JUDGE

(AMARJOT BHATTI)
JUDGE

23.03.2023
ajp

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