IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.03.2023

1. ITA No.21 of 2020 (O&M)

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

Versus

M/s Ind Swift Laboratories Limited
.....Respondent

2. ITA No.50 of 2020 (O&M)

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

Versus

M/s Ind Swift Laboratories Limited
.....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.

This judgment shall dispose of ITA No.21 of 2020 and ITA No.50 of 2020 together as common question of law and facts are involved in both the appeals. For reference, facts are being taken from ITA No.21 of 2020.

The appellant has come up in appeals against the common order dated 30.04.2019 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘A’, Chandigarh in ITA No.1266/Chd/2017 and

ITA No.1304/CHD/2017, for the assessment year 2012-2013, whereby appeal filed by the revenue has been dismissed, whereas the appeal of the assessee has been allowed.

While passing the impugned order, the Tribunal had decided three appeals together i.e. ITA No.739/Chd/2016 (preferred by the department in the case of M/s Halcyon Life Sciences Pvt. Ltd), ITA Nos.1266.Chd/2017 and 1304/Chd/2017 (cross appeals, out of which present appeals have arisen) against the order dated 19.062017 passed by the Commissioner of Income Tax (Appeals) – 3, Gurgaon.

In the case of present assessee i.e. Ind.Swift Group of Companies (ITA No.1304/Chd/2017), the assessee-company had surrendered an income of Rs.14,50,41,000/- to cover all discrepancies in seized documents, inventories etc. The CIT (A) had observed that with regard to seized documents, an amount of Rs.12,73,41,000/- was surrendered as unaccounted cash profit earned from trading from Crude Menthol Oil. Remaining amount of Rs.1,77,00,000/- was surrendered in order to cover discrepancy, if any found in the seized documents. The CIT (A) through deleted the penalty in respect of the amount, which tallied with the transactions of trading in Crude Menthol Oil recorded in the seized documents, however, he confirmed the penalty on the surrendered amount of Rs.1,77,00,000/- on the ground that the same was not represented by any specific asset, nor with any entry in the books of account or other documents or transactions found in the course of search and hence, does not fulfill the conditions for getting immunity from penalty under Section 271AAA of the Income Tax Act.

Upon filing of appeal against the said order, the Tribunal observed that the assessee had surrendered an amount of Rs.14,50,41,000/- on account of the aforesaid discrepancies/unaccounted transactions found during search action. With regard to the remaining amount of Rs.1,77,00,000/-, which was with respect to the unaccounted transactions, the assessee had surrendered the said amount to cover up further discrepancies, if any, found in the seized documents. The Tribunal returned a finding that the above said amount, which was surrendered, did not relate to any information, which had been got from the seized documents. Hence, the amount of Rs.1,77,00,000/- would fall within the definition of undisclosed income as per Section 271AA of the Act. The said section is reproduced as under:-

> "(a) "undisclosed income" means-
>
> (i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has--
>
> (A) not been recorded on or before the date of search in the books of account or other documents maintained in thenormal course relating to such previous year; or
>
> (B) otherwise not been disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner] Commissioner before the date of search; or
>
> (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expenses recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and

would not have been found to be so had the search not been conducted."

Keeping in view the above said provisions, the Tribunal held that in the case of surrender of Rs.1,77,00,000/-, except the seized documents, otherwise nothing was found during the search action, which would construe undisclosed income of the assessee as defined under the provisiojns of Section 271AAA of the Act. With these observations, the appeal filed by the assessee was allowed.

Learned counsel for the appellant has not been able to dispute the fact that as per definition of Section 271AAA of the Act, amount of Rs.1,77,00,000/- would fall in the category of undisclosed income. Hence, as per the above said provisions, the penalty has been rightly deleted by the Tribunal qua surrendering of amount of Rs.1,77,00,000/-. So far as the amount of Rs.14,50,41,000/- is concerned, this amount was surrendered keeping in view the discrepancies/unaccounted transactions found in the seized documents during search conducted by the officers of the appellant-department on the premises of the assessee-company. Since unaccounted cash profit was earned from the trading from Crude Menthol Oil, the penalty has not been imposed by the CIT (A), which has been rightly upheld by the Tribunal. The CIT (A) has deleted the penalty imposed on the amount of Rs.12,73,41,000/- on the ground that Sh. Nav Rattan Munjal, Promoted Director of the Group Companies, had specifically mentioned that these documents contained details of trading of Crude Menthol Oil (CMO). In this backdrop, the CIT (A) had not levied penalty on the aforesaid amount.

After going through the impugned order, we are of the view that appeal filed by the revenue, on this issue, has been rightly dismissed. The impugned order has been passed after appreciating the facts in the right perspective and no ground is made out to interfere therein. No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeals i.e. ITA No.21 of 2020 and ITA No.50 of 2020 stand dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

16.03.2023
ajp

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