209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:100161-DB

ITA-585-2008 (O&M)
Date of Decision: 05.08.2024

Dhiman Industries …Appellant

Vs.

The Asstt. Commissioner of Income Tax …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Ranvijay Singh, Sr. Standing Counsel for revenue.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The following questions of law were proposed at the time of admission of the appeal on 08.09.2009:-

> "(i) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law in reversing the well-reasoned order of the CIT (A) and that too without giving any basis and without passing a speaking order on the issue involved?
> (ii) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law in upholding the order of Assessing Officer whereby trading results were rejected and provisions of Section 145 were applied?
> (iii) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law in upholding the order of Assessing Officer whereby GP Rate of 21.95% was applied, without giving any basis or referring any comparable case to

apply this rate and thus, sustaining addition made in total income of the assessee?

2. Learned counsel for the appellant does not press question No.1 and submits that questions No.2 and 3 need to be examined jointly by this Court.

3. It is a case where the assessee had declared gross profit at the rate of 19.44% on the net sales of Rs.2,35,62,536/-. The Assessing Officer has not agreed with the contentions basically on the ground that it would not be possible to have a constant net sale for preceding three years resulting in the same GP at the rate of 19.44%. Since the assessee failed to substantiate the basis of constant GP, completeness and correctness of consumption of raw material and stock declared at the close of year ending on 31.03.1997, the Assessing Officer passed an order against the assessee on 30.03.2020, assessing the gross profit at the rate of 21.95%.

It was observed that for conveyor machine, costs worked out by the assessee was Rs.44,000/- but the same was worked at Rs.43,140/- by the Assessing Officer and the GP was assessed @ 21.56% instead of 20% as worked out by the assessee.

Similarly, for Batch, the costs worked out by the assessee was Rs.46,070/- but the same was worked out at Rs.43,850/- working out GP to be 25.42% instead of 16% worked out by the assessee.

Similarly, for Rope Sizer machine, the costs worked out by the assessee was Rs.42,895/-, but the same was worked out by the Assessing Officer at Rs.40,480/- and arrived GP @ 26.40% as against 22% as worked out by the assessee. Hence, the total GP on average was worked out to 21.95% and thus an addition of Rs.5,89,063/- was made.

4. The assessee carried out the order to CIT (Appeals), who overturned the order of the Assessing Officer but ITAT has re-examined the case in appeal taken up by the revenue and found the assessment done by the Assessing Officer by applying Section 145 of the Act, 1961, to be inconformity with law. It upheld the order of the Assessing Officer holding the GP at 21.95% instead of 19.44% as declared by the assessee.

5. We find that addition made is after deliberating upon each and every aspect of the matter and in terms of Section 145 of the Act, 1961, which power can be exercised by the Assessing Officer.

6. Learned counsel for the appellant by relying upon the report of the valuer submitted that the GP as arrived at by the Assessing Officer and upheld by the ITAT @ 21.95% is on much higher side. However, we are not impressed and do not find any reason to differ from the order passed.

7. Accordingly, we answer questions No.2 and 3 in favour of the revenue and hold that there is no error caused in the order of the Assessing Officer as upheld by the ITAT. The appeal accordingly fails and is dismissed.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

05.08.2024
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No