

ITR-3-2010 (O&M)

-1-

207

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

-.-

ITR-3-2010 (O&M)  
Reserved on :-14.02.2024  
Pronounced on:-22.03.2024

M/s Shree Digvijaya Woollen Mills Ltd., Amritsar ....Petitioner

VERSUS

Commissioner of Income-Tax, Amritsar ....Respondents

**CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Ms. Radhika Suri, Sr. Advocate with  
Mr. Abhinav Narang, Advocate and  
Mr. Sidhant Suri, Advocate for the petitioner.

Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel  
for the respondent-Income Tax Department.

**SUDEEPTI SHARMA, J.**

1. The Hon'ble Punjab and Haryana High Court vide its order dated 23.08.2007 under Section 256(2) of the Income-tax Act directed the Income-tax Appellate Tribunal to refer the following question of law for their opinion:-

*“Whether on the facts and circumstances of the case, was the Tribunal wrong in law and acted perversely in sustaining the additions of Rs.34,28,414/- on account of excessive shortage and Rs.2,15,150/- on account of scrap value of discarded cables which had been made by the Assessing Officer on surmises and conjectures without any evidence and material justifying such additions?”*

2. The assessment year involved in the present case is 1983-84. The facts of the case regarding addition of Rs.34,28,414/- as noted by the A.O. during the course of framing of assessment order are that the A.O observed that assessee

ITR-3-2010 (O&amp;M)

-2-

had shown wastage of 76,336 Kgs. on consumption of 5,85,295 Kgs. which worked out to 13.04% as against wastage shown @ 8.66% of last year on spinning of worsted yarn. When the assessee was confronted with such abnormal increase in wastage, the assessee explained the variation due to product mix manufactured by the assessee during this year as compared to last assessment year. It was submitted that in the last assessment year, the assessee in its worsted Division spin yarn for Angola and Serge Battle Dress for defence requirements weighing 95,540 Kgs representing 55.4% of production and it did not involve re-combing while during the year under consideration, only 44,391 Kgs of yarn was spun for this purpose which accounted for only 8.77% of total production. The assessee also pointed out that besides, bulk production in single shade and larger lot was made, that due to shortage and dearth of Govt. business the company had to switch its production plans to manufacture material for the civil market. This necessitated spinning of worsted yarn in small lots of different shades and involved recombining process also. As a result of this overall wastage increased as compared to the last year. However, the A.O found the explanation given by the assessee untenable for the reasons reproduced below:-

“i. Spinning of Worsted yarn for Angola and Serge battle dress for Defence requirement:-

*It is a fact that last year, the assessee has spun yarn of 95,540 Kg for this purpose whereas this year the company has spun 44,390 Kgs. In this regard it is pointed out that the defence dress was prepared mainly of wool and less other material like Polyester and Viscose etc. It is a common knowledge that wastage in the spinning of woolen yarn is more than the spinning of synthetic yarn or blended yarn.*

*Therefore, this argument of the assessee is not at all appealing. On the other*

hand, on scrutiny of production of worsted yarn, it is seen that the assessee has spun majority of the blended yarn using viscose and polyester yarn. As per annexure 10 the following details have been given regarding production of worsted yarns:-

|                           |       |          |
|---------------------------|-------|----------|
| All Wool                  |       | 54,261   |
| Viscose                   |       | 73,244   |
| Terry wool                | 55:45 | 49,955   |
| Terry wool                | 70:30 | 1,37,769 |
| Tweeds                    |       | 41,233   |
| Govt. material            |       | 44,391   |
| Synthetic Fabrics         |       | 27,532   |
| Millionore                |       | 64,260   |
| Shawls, blankets and Lois |       | 11,587   |
| Carpet yarn               |       | 44,411   |

In view of the above details, it is observed that out of the total worsted yarn manufactured at 585294 Kg., 288500 Kg. is of synthetic blended yarn in which the wastage is nominal.

Secondly, it has been emphasized by the assessee that for manufacture of fine quality of yarn re-combing process is also involved. It is admitted that re-combing is required of manufacture of certain varieties of worsted yarn. But it is seen that the assessee is not having any re-combing process. The top is received whether it is single combed or double combed from the wool combers and net weight of the receipt of the top of the wool is taken in the stock. Therefore, since the assessee has taken the net figure of the top, it cannot be said that the assessee has got the top re-combed and applied re-combing process. It has further been explained vide

ITR-3-2010 (O&amp;M)

-4-

*its letter dated 17.02.1986 that though there is a wastage of 13.04% shown in the worsted yarn spinning as against 8.66% of last year, the assessee has recovered more visible waste than the last year. It has also been submitted that last year out of 8.06% of wastage, 7.49% was visible wastage and 1.17% was invisible wastage and against this during the accounting period under consideration, the assessee has recovered 12.19% visible waste and the invisible wastage is 0.86%. This argument is entirely contradictory to the argument earlier given by the assessee i.e. excess wastage is because of the manufacture of finer variety of yarn this year as compared to the last year. It is pointed out here, the more the finer variety is, the more will be the invisible wastage. Since the assessee has shown less invisible wastage, it proves that the assessee's earlier claim of manufacture of finer quality of worsted yarn is not correct. As has already been discussed above, since the assessee has manufactured majority of synthetic blended yarn during the account period under consideration, as compared to the last year, the shortage this year should have been far less than the last year. Keeping in view the above discussion, I reject the contention of the assessee that the higher wastage should be accepted."*

Thus, keeping in view the above facts and the past history, the A.O estimated the visible wastage at 8% and invisible wastage at 1.25%. Accordingly, the A.O worked out the excess wastage at 22,199 Kgs being quantity of yarn as in stock or sold out. Taking the value of closing stock of yarn shown by the assessee at Rs.154.44 per Kg., the A.O worked out the addition at Rs.34,28,414/- (i.e.  $154.44 \times 22,199$  Kgs) and added the same to income of the assessee.

3. Regarding the other addition of Rs.2,15,150/- made by the Assessing Officer, the facts are that in the year under consideration, the assessee discarded copper wire cable worth Rs.2,46,553/- and claimed under the head "Assets

ITR-3-2010 (O&amp;M)

-5-

Discarded during the year.” The A.O further noted that copper wire cable was purchased by assessee from 1955 to 1965 and that was over-head and under-ground wire and cables of copper covered with PVC or rubber. From the sales of discarded goods, the A.O found that the assessee had not shown sale of copper wire in the year under consideration. When the assessee was confronted with this fact, the assessee submitted that under-ground wire lost its utility and the same is not normally recovered as the cost of labour charges for recovering under-ground wire was much higher than the value of scrap. Further such recovery of copper wire caused damage to the building and flooring. It was also the case of the assessee that scrap sold at Rs.4,29,754/- also included copper wire. However, the A.O found on enquiry that assessee had shown sale of old stores at Rs.1,55,821/- for which no details were given. The A.O personally visited the factory premises of the assessee-company alongwith Shri S.K.Gupta, Inspector on 20.03.1986 and found that there was no stock of copper wire in the godown of assessee. Shri R.C.Mehta, Secretary of the company was requested to produce the sale bill of copper wire and he managed to produce the sale bill for sale of copper wire worth Rs.16,000/-. It was further pointed out by the store-keeper of the company that no sale of copper wire was made during the relevant period except the above sale of Rs.16,000/-. After considering the explanation of the assessee, the A.O noted that copper wire worth Rs.2,46,552/- purchased in early 50s cannot be thrown away as the value of the copper wire was high in the market. The A.O, therefore, held that assessee had estimated the discarded value of the copper wire and accordingly worked out the profit under Section 41(2) of the Act as under:-

Rate of copper wire in 50's was near  
About Rs.7-8 per Kg. Therefore, the  
Cost of PVC wire was about Rs.15-

ITR-3-2010 (O&M)

-6-

|                                                                                                                                                                 |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 16 per Kg. i.e. 5-6 yards. On a liberal Estimate the value is taken at Rs.20/- Per Kg. Thus, the total quantity in Terms of Kg. comes to 12,274 Kgs (245558-20) | 12,274 Kgs.              |
| Less 60% of its as copper wire scrap out of 7384 Kgs 2/3 is considered as reasonable Balance recoverable                                                        | 7,384 Kgs.<br>4,623 Kgs. |
| The scrap value is taken @ Rs.50/- Per Kg. Thus, the value of 4623 Kgs Comes to                                                                                 | Rs.2,31,150/-            |
| Less Value of scrap sold down Profit U/s 41(2)                                                                                                                  | Rs. 16,000/-             |
|                                                                                                                                                                 | <u>Rs.2,15,150/-</u>     |

Accordingly, the A.O made the addition as the assessee failed to show the value of copper wire.

4. In appeal, the CIT(A) taking into consideration all aspects deleted the addition of Rs.34,28,414/- made by the A.O on account of excessive wastage and confirmed the addition of Rs.2,15,150/- made by the A.O on a/c of scrap value of discarded cost.

5. The Department and assessee filed cross appeals before the Tribunal against the deletion and confirmation of above mentioned additions. The Tribunal on the basis of discussion and looking into material on record, confirmed the additions of Rs.34,28,414/- and Rs.2,15,150/- made by the Assessing Officer.

6. The assessee then filed reference application under Section 256(1) of the Income-tax Act, 1961 against the above order, which was rejected by the Tribunal vide order dated 17.07.1998.

7. The assessee then approached the Hon’ble High Court u/s 256(2) of the Income-tax Act, for issuing appropriate directions to the Tribunal. The

ITR-3-2010 (O&amp;M)

-7-

Hon'ble High Court vide order dated 23.08.2007 directed the Tribunal to refer the matter to the High Court.

8. Accordingly, the matter is referred to the Hon'ble High Court as directed.

**Submissions of learned counsel for the petitioner :-**

i) Learned Sr. counsel for the petitioner contends that during the year under consideration i.e. 1983-84, the assessee had shown wastage of 76,336 Kgs out of total consumption of 5,85,294/- Kgs, which comes out to 13.04%.

ii) Learned Sr. counsel further contends that in the assessment order the Assessing Officer, under the Head **Wastage**, by holding that the assessee had shown wastage of 8.66% in the Assessment Year 1982-83 and thus, the wastage of 13.04% shown by the assessee in the Assessment Year 1983-84 is erroneous and in excess and on this presumption held that percentage of visible wastage should have been 8% of 5,85,294 Kgs i.e. 46,823 Kgs and percentage of invisible wastage should have been 1.25% of 5,08,958 Kgs i.e. 7,316 Kgs. Thus, the total wastage was assessed at 54,139 Kgs (46,823 Kgs + 7,316 kgs). Consequently, out of total wastage shown by the assessee of 76,336 kgs., the A.O worked out 22,199 kgs, (76,336 kgs – 54,139 kgs) as excessive wastage. The A.O. then went further, and held that this excess wastage of 22,199 kgs, should have been added to the total income of the assessee at the rate at which the closing stock in the worsted yarn store has been valued by the assessee which is Rs.154.44 per kgs. Consequently, the addition of Rs.34,28,414/- (22,199 kgs x Rs.154.44) was made by the assessing officer in the net profit of the assessee treating the wastage as addition to closing stock or sales out of the books. That no defect was pointed out in the consumption or production register of the assessee or in the method of accounting regularly

ITR-3-2010 (O&amp;M)

-8-

appointed by the assessee and thus the addition was made without resorting to the proviso to Section 145 of the Income Tax, 1961 and contrary to the assessment orders passed for AY 1975-76 onwards, wherein higher wastage was accepted.

Apart from it, during the AY under consideration, the assessee has also discarded copper wire worth Rs.2,46,553/- and this amount has been claimed under the head '*Assets Discarded During the year*'. It was submitted by the assessee that the discarded copper wire has been taken to the old store account and whenever there is any sale, it is shown in the profit and loss account. It was further submitted by the assessee vide its letter dated 20.01.1986 that after the underground wire loses its utility, it is not normally recovered as the cost of labour charges for recovering underground wire is much higher than the value of scrap besides causing damage to building and flooring. It was further submitted that scraps sold include copper wire also. It was further submitted that the sale includes all types of stores **and copper wire also**.

However, the AO without appreciating any of the explanations given by the assessee, made the addition of Rs.2,15,150/- under the head profit u/s 41(2).

iii) It is further contended by the learned Sr. counsel that the assessee thereafter filed an appeal before the Commissioner of Income Tax on the ground that the assessee is carrying on the business of production of yarn for the last so many years and the percentage of wastage in the preceding years has consistently been more than 13% and it was only for the preceding two years that the percentage of wastage had come down. The assessee also submitted year wise chart showing the percentage of wastage which is being produced here under:-

| Sr. No. | Assessment Year    | Production of yarn in weight in worsted Division | Wastage weight | Wastage Percentage |
|---------|--------------------|--------------------------------------------------|----------------|--------------------|
|         |                    | Kgs.                                             | Kgs.           |                    |
| 1.      | 1975-76            | 2,80,557                                         | 44,310         | 13.64%             |
| 2.      | 1976-77            | 4,30,619                                         | 73,532         | 14.58%             |
| 3.      | 1977-78            | 3,71,193                                         | 72,971         | 16.43%             |
| 4.      | 1978-79            | 3,99,809                                         | 72,280         | 15.31%             |
| 5.      | 1979-80            | 5,05,279                                         | 80,264         | 13.71%             |
| 6.      | 1980-81            | 4,33,375                                         | 65,663         | 13.16%             |
| 7.      | 1981-82            | 6,69,732                                         | 66,855         | 9.08%              |
| 8.      | 1982-83 (3 months) | 1,72,537                                         | 16,376         | 8.66%              |
| 9.      | 1983-84            | 5,08,958                                         | 76,336         | 13.04%             |

Thus, it was submitted that the A.O went on an erroneous presumption by assuming that the percentage of wastage of 13.04% is excessive just by looking at the data of previous two years without appreciating the fact that the wastage of percentage accepted by the department varied from year to year because it depended not only on the quality of machinery installed but also the quality of raw material used, quality of production and the quality of the labour and other variables. It was further pointed out before the CIT(A) that in the A.Y.1977-78, the wastage of 16.43% was accepted while in the A.Y.1982-83, where production records for three months have been taken into consideration, wastage of 8.66% was accepted. In fact it was pointed that if the years 1981-82 and 1982-83 are ignored, wastage accepted by the department was always more than 13%. Consequently, the CIT(A) deleted the above said addition of

ITR-3-2010 (O&amp;M)

-10-

Rs.34,28,414/- made by the A.O by observing that this addition was made merely on conjectures and surmises and as such could not be justified.

Thus, CIT(A) rightly observed that without pointing out any error in books of accounts or method of accounting and without resorting to proviso to Section 145 of the IT Act, the said addition was completely unsustainable.

iv) It was further submitted by the learned Sr. counsel that the only reason for addition of Rs.2,15,150/- made under Section 41(2) of the IT Act appeared to be the desire of the Assessing Officer that the company ought to have dug out undergrounds cables even at the cost of damaging building, converting cables to copper and then selling copper. No defect in the books of account maintained regularly had been found and yet it was alleged that the copper must have been sold as the value of copper was very high in the market. However, the CIT(A), without appreciating any of the arguments upheld the addition made by the AO under the head of profit u/s 41(2).

v) Learned Sr. counsel further contends that aggrieved by the order of CIT (A), the revenue filed an appeal before the ITAT, Amritsar on the ground that the percentage of wastage was excessive as compared to earlier two immediately preceding assessment years. It was submitted by the assessee before the ITAT, that the assessee company has been claiming wastage since 1974-75 and the highest wastage claimed by the assessee was 16.43% and the department had never doubted the rate of wastage claimed and allowed the same. The other plea was that the rate of wastage cannot be stated as variation but is natural. It was also submitted that the account books of the assessee are being maintained by following identical method of accounting from A.Y. 1975-76 onwards and the result of the account books were being accepted by the department consistently. All the details

ITR-3-2010 (O&amp;M)

-11-

of consumption of raw material, production of finished goods, purchases and sales were fully vouched and all the bills were attached to the expenses and no defect has been pointed out by the A.O in the method of accounting or in the books of accounts and thus, there is no justification for disallowing the rate of wastage, which is simply based on personal whims of the A.O. It was further submitted that the G.P. rate for the year under consideration is 24.92% which is highest from A.Y. 1975-76 onwards and once the assessee itself has come with the highest rate of G.P., no justification can be given to pin point the minor claim of assessee. However, the ITAT without controverting the findings recorded by CIT (A) and in a completely erroneous manner upheld the order of the A.O by observing that resorting to the proviso to Section 145 was not required.

Apart from this, the assessee also filed cross appeal before the ITAT on the point of addition of Rs.2,15,150/- under the head profit u/s 41(2). The same line of arguments was taken before the ITAT also that the cost of extracting copper from the underground wires was more than the scrap value of copper. However the ITAT failed to appreciate any line of this head.

vi) Learned Sr. counsel further contends that A.O in the present case has on wrong presumption valued the wastage of 22.199 Kgs @ Rs.154.44 per Kgs, which is the rate at which closing stock has been valued. Thus, the A.O accepted the books of account of assessee including the rate at which closing stock has been valued and without recomputing trading results of the assessee, made addition to the net profit.

vii) Learned Senior Counsel has relied upon the judgment of Calcutta High Court in Siddheshwari Cotton Mills (P) Limited vs Commissioner of Income Tax 1979 (117) ITR 953, judgment of Bombay High Court in R.B.

ITR-3-2010 (O&amp;M)

-12-

*Bansilal Abrichand Spinning & Weaving Mills Limited vs Commissioner of Income Tax* (1970) 75 ITR (BOM) and judgment of Madras High Court in *Carumugaswami Nadar vs Commissioner of Income Tax* (1961) 42 ITR 237, to submit that once the Assessing Officer has accepted the books of accounts of the assessee including the rate on which the clothing stock has been valued, a presumption cannot be drawn of wastage of 22.199 Kgs @ ` 154.44 per kg. Relevant para *Siddheshwari Cotton Mills (P) Limited's* case (supra) is extracted below:-

*“18. We do not accept the contentions of Mr. Sengupta that the ITO must have disbelieved the books of the assessee. In the assessment order the ITO has not adverted to the books of the assessee at all and to assume that he had considered and rejected the books would be a speculative assumption.*

*19. We also do not accept his further contentions that the question referred does not arise from the order of the Tribunal inasmuch as the Tribunal has only decided that the wastage claimed by the assessee has not been proved. The Tribunal has restored the order of the ITO and, therefore, must be held to have sustained the addition of Rs. 34,000. The matter having been dealt with by the Tribunal the question clearly arises out of the order. The question of the said addition, whether specifically raised or not, was in fact before the Tribunal and the Tribunal dealt with it.*

*20. It appears to us that the Tribunal having concluded that the assessee has failed to prove the wastage claimed, the Tribunal fell into error in assuming that-*

- (a) the entirety of the extra wastage was utilised by the assessee and manufactured into 4,526 pieces of dhoties (and not sarees).*
- (b) the said dhoties were sold at the average sale price of Rs. 7.52 per piece.*

*21. Mr. Sengupta was unable to bring to our attention any material from the records from which the aforesaid conclusions could be based or drawn. We also do not accept the contention that the assessee did not challenge the said addition. The assessee challenged the order of the ITO and succeeded before the AAC. Having been unsuccessful before the Tribunal the assessee has again raised the question in this reference challenging the addition.*

*22. For the reasons given above, the question referred must be answered in the negative and in favour of the assessee.”*

The learned Sr. counsel, therefore, prays that question of law should be answered in negative and in favour of the assessee.

**Submissions of learned counsel for the revenue**

Learned counsel for the revenue argued on the lines of the assessment order passed by the Assessing Officer and, therefore, prays that the question of law should be answered in favour of the revenue and against the assessee.

9. We have heard learned counsel for the parties and perused the whole record with their able assistance.

10. The relevant portion of the decision by Commissioner Income –tax (Appeals) – II, Amritsar, while deciding the appeal of the assessee, is as under:-

*“From the perusal of the arguments of the learned counsel, which have been produced in the earlier paragraphs, following position emerges:-*

*(A) The Assessing Officer has not been able to specifically point out whether while making the addition he was applying the proviso to section 145(1) or section 145(2).*

*(B) The appellant was maintaining complete production records and all the purchases,*

*sales, expenses etc. were properly vouched and even after inspecting the factory the Assessing Officer had failed to detect any discrepancies or defects in the books of accounts maintained and production records maintained by the appellant.*

(C) *From 1924 till the assessment year in appeal, the books of accounts were always accepted and, therefore, while rejecting the books of a/cs. for the assessment year in appeal it was the duty of the Assessing Officer to prove to the hilt that the quality of the accounts or production records maintained by the appellant had so deteriorated during the assessment year in appeal that a trading addition was called for by invoking the provisions section 145(2).*

(D) *The wastage percentage accepted by the department varied from year to year because it depended not only on the quality of the machinery installed but also the quality of raw-material used, quality of production and the quality of the labour and other variables. In this connection it was specifically pointed out in the assessment year 1977-78 that wastage of 16.43% was accepted while in the assessment year 1982-83, where production records for 3 months have 8.66% was accepted. In fact, if the years 1981-82 and 1982-83 are ignored, wastage accepted by the department was always more than 13%.*

(E) *The Excise Authorities were having a tight control over the production and production*

*records were also maintained in accordance with the instructions of the Excise Department and without the permission of the Excise Authorities not a single yard of cloth could be taken out of the factory. The Assessing Officer has not pointed out how inspite of tight control of the Excise Department there could be extra stock of Rs.34,28,414/- or that stock could be sold outside the books without paying excise duty. In this connection it is relevant to observe that unless the Assessing officer could bring on record evidence which could prove that the appellant company hoodwinked the Excise Department, the accounts and records duly checked by that department could not be considered incorrect.*

*Taking into consideration the above position, the addition of Rs.34,28,414 made by the Assessing Officer merely on surmises and conjectures could not be considered justified. It is accordingly deleted.*

**2. ADDITION OF RS.2,15,150/- UNDER SECTION 41(2) OF THE INCOME TAX ACT, G.NO.1**

*The Assessing Officer made an addition of Rs.2,15,150/- under Section 41(2) and after taking into consideration the following facts:-*

*i) During the accounting period relevant to assessment year in appeal the appellant company had discarded copper wire cable worth Rs.2,46,553/- and the said amount had been claimed under the head 'Assets Discarded during the year'. It was submitted that discarded copper wire had been taken to the old store account and whenever there was any sale, it was shown in the profit and loss account. From the details available with the return it was observed by the Assessing officer, that the copper wire cable was purchased by the appellant, from 1955-65. Most of the copper wire purchased in*

*1950's and according to the Assessing Officer since the over-head, underground wire and cables were of copper wire, they were covered with PVC, or rubber. From the details of the sales of the discarded goods, it was observed by the Assessing Officer that the sale of the copper wire had nowhere been shown. During the assessment proceedings it was submitted in letter dated 20.01.1986 that after underground wire lost its utility it was normally not recovered as the cost of labour charge for recovering the under-ground wires was much higher than the value of the scrap, besides damage to building and flooring was also caused. It was further submitted that the scrap sold included copper wire also and for this purpose attention of the Assessing Officer was drawn to Annexure 36 of letter dated 06.07.1985, which showed that stores had been sold for Rs.4,29,754/-. It was further claimed that the sale included all type of stores including copper wire also. Further scrutiny of the annexure revealed to the Assessing officer that the old stores had been shown at Rs.1,55,821/- but no details had been given. In order to verify the sale of copper wire and the stocks discarded, the Assessing Officer personally visited the factory premises of the appellant-company along with Sh. S.K.Gupta, Inspector on 20.03.1986. The Assessing Officer directed Sh. Gupta, to see the stores to find out if there was any stock of copper wire. He reported that there was no stock of copper wire at that time. Sh. R.C.Mehta, Secretary of the Appellant Company was then requested to produce the sale bill of copper wire. He produced a sale bill for the sale of copper wire worth Rs.16,000/-. It was also pointed out by the store-keeper of the company that no sale of copper wire was made during the period 1981-82 to date except the above-mentioned sale.*

*While challenging the addition made by the Assessing Officer under this head, the learned counsel has not denied the contention of the Assessing Officer that the appellant company had actually purchased copper wire worth Rs. 2,46,552/- in early 50s. However, the learned counsel has tried to explain the sale of copper wire by*

*submitting that conorally cables which are underground are not taken out because that will be damaging the floors and the building. However, if this contention of the learned counsel is considered correct then considering the life of the company it is feared that most of the floor will be having cables underground although they may not be of any use to the company. The above contention of the learned counsel could not be accepted because normal practice followed is that whenever a cable becomes defective then it is taken out by digging the ground and new cable is installed at the place of the old cable. It is relevant to observe that if this procedure is not followed and new cable is installed at different places then it will be difficult to connect various points of the machinery with a cable because then new terminal will have to be installed for that purpose. Therefore the plea of the learned counsel that defective cable having copper wire was not extracted from the ground could not be accepted because if the position had been no then the Assessing Officer at the time of inspection of the factory promise would not have been separate bills showing sale of copper to extent of Rs.16000/-. The fact that the assessing officer was able to locate some bills showing up sale of copper shows that the appellant was actually selling the copper out of defective cables extracted from the ground and the sale proceeds were not being credited under the head 'Miscellaneous Incomes' showing sale of scrap.*

*As the learned counsel has not been able to effectively counter the argument of the Assessing Officer that the appellant had actually sold copper out of defective cables, the action of the Assessing Officer in computing u/s 41(2) at Rs.2,15,150/- is considered fully justified. Accordingly, the addition by him is uphold.*

11. We have considered the record and find that the assessee's books of accounts, trading account and the stock has been found to be within the satisfaction of the Income Tax authorities and the Assessing Officer had accepted the same.

ITR-3-2010 (O&amp;M)

-18-

The wastage of 13.04% shown by the assessee has been held to be more higher than the wastage shown for the previous year i.e. 8.66%. However, from the perusal of the record, as maintained by the assessee, shown in the tabular form for the various assessment years from 1975-76 upto 1983-84, we find that the wastage percentage was varying from 13.64% and increased upto 16.43% and decreased to 8.66% only for a period of three months in the year 1982-83, while in the year 1983-84 remained consistent to 13.04%. Thus, it cannot be said that the wastage has been shown on the higher side for the year 1983-84. Moreover, this Court find that the Income Tax Authorities had accepted the earlier wastage percentage without any demur.

12. This Court, however, is also satisfied and accept the contention of the assessee that since the stock production and consumption records were maintained under the supervision of the Excise Authorities and there is no objection raised with regard to the said stock. The Assessing Officer has not objected to the total stock maintained, it could not have proceeded on a presumption alleging higher wastage shown by the assessee.

13. The relevant provision as applicable to the case of the assessee at the time of assessment year 1983-84 is reproduced as under:-

***“Section 145 of the Income Tax Act:-***

***Method of accounting :-***

***145. (1) Income chargeable under the head “Profits and gains of business” or “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee:***

*Provided that in any case where the accounts are correct and complete to the satisfaction of the Income-tax Officer but the method employed is such that, in the opinion of the Income-tax Officer, the income cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.*

*(2) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in Section 144.”*

14. A perusal of Section 145 of the Income Tax Act shows that income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee, and as per proviso, in any case, where the accounts are correct and complete to the satisfaction of the Income Tax Officer, but the method employed is such that, in the opinion of Income-tax Officer, the income cannot properly be deducted therefrom, then computation shall be made upon such basis and in such manner as the Income-tax Officer may determine and in the present case the Assessing Officer has accepted the closing stock and further accepted the trading account to be correct and complete and without computing afresh, as per the proviso to Section 145(1) of the Act, the Assessing Officer has made addition to the account of wastage.

15. The income-tax department throughout accepted the trading account of the assessee and there is no dispute regarding the quantity of cotton shown to be

ITR-3-2010 (O&amp;M)

-20-

consumed as per the books of account maintained by the assessee and no material to show and to establish that the increase in percentage of wastage was attributable to any suppression of weight or any suppression of production. The Assessing Officer without mentioning any irregularity in the accounts and accepting it could not make addition without giving any reasoning and fresh computation.

16. A perusal of the record further shows that the assessing officer has resorted to provisions of Section 145(1) of the Income Tax Act without recording any finding as to whether the case of the petitioner falls under proviso to Section 145(1) or sub-Section (2) of Section 145 of the Act. If the case of the petitioner fall under the proviso to Section 145, then the Income Tax Officer had to first reject the whole books of account of the assessee before adding any amount to the income of the assessee. The closing stock is valued as per the computation by the assessee regarding the profits and losses and if the books of account of the assessee including rate at which closing stock had been valued are accepted by the Assessing Officer, the addition to the net profit could not be made without re-computing the trading result of the assessee and if as per Section 145(1) of the Act, the trading account of the assessee are accepted to be correct and complete, the Assessing Officer without re-computing cannot make additions to the net profit. Thus, the addition of Rs.34,28,414/- on account of excessive shortage is held to be not sustainable in the eyes of law.

17. So far as addition of profit under Section 41(2) on the sale of copper wire to the tune of Rs.2,15,150/- is concerned, it is observed in the assessment order that the assessee discarded copper wire cable worth Rs.2,46,553/- and this amount was claimed under the head 'Assests Discarded during the year'. It was stated by the assessee that discarded copper wire was taken to the old store account

ITR-3-2010 (O&amp;M)

-21-

and all the sales were shown in the profit and loss account. From the details as shown to the Assessing officer alongwith return, it was seen that the copper wire cable was purchased by the assessee, from 1955-65. Most of the copper wire was purchased in 50's. Since from the details of the sale of discarded goods sale of copper wire was not shown, therefore, the assessee was required to show the sale of scrap of copper wire and he by its letter dated 20.01.1986 stated that after underground wire lose its utility, it is not normally recovered as the cost of labour charges for recovering under-ground wires is much higher than the value of the scrap, besides damage to building and flooring is also caused. Further, it was submitted that scraps sold included copper wire and for this purpose attention was drawn to Annexure 36 of letter dated 06.07.1985, which showed that stores were sold for Rs.4,29,754/-. Further the assessee showed during the assessment proceedings that sale included all types of stores and copper wire also. Further it was submitted that the company does not recover the copper out of old copper wire but the old wires are sold as scraps. On scrutiny of the annexure referred to above, it was seen (as observed by the Assessing Officer in assessment order) that the old stores sale had been shown at Rs.1,55,821/- but no details were given. In order to verify the sale of copper wire and stocks discarded, the Assessing Officer personally visited the factory premises of the assessee-company along with Sh. S.K.Gupta, Inspector on 20.03.1986. Sh. Gupta, was directed to see the stores to find out if there is any stock of copper wire. He reported that there was no stock of copper wire at that time. Sh. R.C. Mehta, Secretary of the Company was requested to produce the sale bill of copper wire. He produced the sale bill for the sale of copper wire worth Rs.16,000/- only. It was pointed out by the store-keeper of the company that no sale of copper wire was made during the period 1981-82 till the

ITR-3-2010 (O&M)

-22-

date of visit by the Assessing Officer except the above-mentioned sale of Rs.16,000/-. But the Assessing Officer did not accept the explanation of assessee and amount to the tune of Rs.2,15,150/- was added as profit under Section 41(2) of the Income Tax Act.

A perusal of the assesment order and the explanation given by the assessee shows that the assessee explained each and every question put by the Assessing Officer. Further inspite of the fact that the Assessing Officer himself personally visited the factory premises alongwith the Inspector Sh. S.K.Gupta, and nothing was found to show that the assessee has tried to evade tax, the Assessing Officer on assumptions and presumptions made addition to the tune of Rs.2,15,150/- as profit. The reasoning given by the Assessing Officer for such an addition is found to be contrary to the facts.

18. Keeping in view the aforesaid findings and conclusion, we hold that the Tribunal has erred in assessing the additions made by the Assessing Officer. Accordingly, the reference is answered in favour of the assessee and against the revenue.

19. Pending application(s), if any, also stand disposed off.

(SANJEEV PRAKASH SHARMA)  
JUDGE

(SUDEEPTI SHARMA)  
JUDGE

22.03.2024  
tripti

Whether speaking/non-speaking: Speaking  
Whether reportable : Yes/No