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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1490/2018

COMMISSIONER OF INCOME TAX Appellant

Through: Mr. Sanjay Kumar, Sr. Standing
Counsel along with Ms. Easha
and Ms. Hemlata Rawat, Advs.

versus

SMT. DEEPTI AGGARWAL Respondent

Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal and Mr. Dushyant
Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER

22.02.2024

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1. The Commission seeks to impugn the order dated 23 April 2018 passed by the Income Tax Appellate Tribunal [“ITAT”] and has proposed the following questions for our consideration:-

“i. Whether on the facts and applicable law, the Ld. Tribunal unlawfully ignored the proven findings of the Assessing Officer and perversely failed to apply an independent judicial mind to adjudicate on the fraudulent claim of manufacturing activity u/s 80-IC of the Income Tax Act 1961 by the respondent?

ii. Whether on the facts and applicable law, the Ld. Tribunal unlawfully ignored the proven and adverse findings of the Assessing Officer by accepting the respondent’s patently incorrect books of accounts with proven recording of sham transactions?

iii. Whether on the facts and applicable law, the Ld. Tribunal perversely ignored binding case law, express provisions of the Income Tax Act 1961 and the materially adverse findings by the Assessing Officer by allowing the respondent to unlawfully transfer through colourable transactions proven inflated sums of



purported purchases and sales of goods between sister concerns and partisan entities?

iv. Whether on the facts and applicable law, the Ld. Tribunal perversely misapplied case law to the respondent's facts by cancellation of disallowance u/s 40(a)(ia) of the Income Tax Act 1961 for a false claim for business expenses?

v. Whether on the facts and applicable law, the Ld. Tribunal by merely copy-pasting the perverse and erroneous order of the Ld. CIT(A), accepting the self-serving statements of the respondent as proven or unchallenged evidence and by reversing the evidentiary burden on the Assessing Officer instead of the respondent, failed to exercise its lawful duty as an independent adjudicatory body and final fact finding authority as articulated by this Hon'ble Court in CIT vs. Jansampark Advertising & Marketing (P) Ltd. (2015) 56 taxmann.com 285 (Delhi)?”

2. The dispute pertains to Assessment year [“AY”] 2009-2010 and where, in the course of assessment, the Assessing Officer [“AO”] recomputed the taxable income of the respondent and also initiated penalty proceedings in terms of Section 271(1)(c) of the Income Tax Act, 1961 [“Act”] read along with Section 274 of the Act. A doubt appears to have been raised by the AO with respect to the eligibility of benefits that were claimed by the assessee under Section 80IC of the Act.

3. Aggrieved by the order of assessment as framed, the assessee approached the Commissioner of Income Tax(Appeals) [“CIT(A)”] who, by its order of 30 March 2013, proceeded to partly allow the appeal. It was thereafter that the appellants approached the ITAT. We note that the CIT(A), while dealing with the Section 80IC question, had rendered the following pertinent observations:-

“16. To sum up in the present case, it is seen that the appellant's new unit is set up in a notified industrial area of Uttaranchal and commenced production with effect from 25.02.2008 which has been certified by the department of Industries, Govt. of Uttaranchal the appellant has filed her return of income within the specified time limit u/s 139(1) of the IT Act, 1961 i.e. 30.09.2009. The



appellant submitted an audit report in Form 3CB u/s 44AB of the IT Act, 1961. This audit report is also supported by an audit report u/s 80IC in Form 10CCB duly signed by the Chartered Accountant. However, the Assessing Officer, somehow doubted the claim of the appellant u/s 80IC and did not consider any of the submissions made by the appellant in support of her case and simply without any cogent reason denied the claim. An assessment cannot be based on surmises and the Assessing Officer has not brought on record any adverse material contrary to that of the appellant to say that the appellant's claim u/s 80IC was not genuine. Without giving any such finding denial of the claim of the appellant is not warranted. The appellant also cited many case laws delivered by the Hon'ble Supreme Court and Hon'ble Delhi High Court and also by various benches of Delhi ITAT where the judicial decisions are in the favor of the appellant. In view of the above discussions and on the basis of the material available on record and also relying on various judicial decisions, I hold that the appellant's claim for deduction u/s 80IC is valid and correct. Therefore, the Assessing Officer is directed to pass a consequential order accepting the claim of the appellant and allow deduction u/s 80IC appeal are decided in favor of the appellant (2)(a)(ii) as per law. In the result, the above grounds no. 1(a), (b), (c), (d). art of the appeal are decided in favor of the appellant.”

4. As is evident from the above, the CIT(A) while upholding the claim under Section 80IC of the Act had framed directions for the AO to pass consequential orders. The ITAT while considering the challenge raised by the appellants, has observed as follows:-

“On careful examination of the order of the Ld. CIT(A) we find that the reasons given by him are incontrovertible in accepting the books results and holding that the reasons given by the Ld. AO for rejection of the books of accounts u/s 145(3) of the Act are not acceptable. According to us the Ld. Assessing Officer has to point out latent, patent and glaring defects in the books of accounts to invoke the provisions of section 145(3) of the Act. The Ld. Assessing Officer has further to show his satisfaction that the books of accounts are incorrect or incomplete. Each infirmity in the books of accounts does not empower the Ld. AO to invoke the provisions of section 145(3) of the Act. Furthermore, the Ld. CIT(A) has also given valid reasons for allowing the claim of the assessee u/s 80IC of the Act. The Ld. Departmental Representative could not controvert the fact pointed by the Ld. AR that on similar facts the assessee was allowed deduction for Assessment Year 2008-09 and Assessment Year 2010-11. In view of this we do not



find any infirmity in the order of the Ld. CIT (A), accordingly, ground No. 1 and 2 of the appeal of the revenue are dismissed.”

5. We note that while dealing with the issue of rejection of books, the CIT(A) itself had in paras 10.1 to 10.3 observed as follows:-

“10.1 From the above provisions of section 145(3), it is evident that this section can be invoked only if the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the appellant in the present case, the accounts of the appellant were audited by the statutory auditors. The deficiencies pointed out by the Assessing Officer are not of the nature which can be made the basis for rejecting the books of the accounts of the appellant. The provisions of sub-section 1 and sub-section 2 of section 145 are not applicable in the present case Merely because, the purchases were recorded, a day prior to the receipt of the goods and if these have been recorded by the appellant in accordance with the date of the bills, the same cannot be the ground for rejection of the books of account The Assessing Officer did not bring on record any adverse material to show that there were some bills which were found not recorded or bills recorded were disowned by the parties who issued those bills etc.

10.2 Similarly, the cheques issued expired and no cognizance of the same was taken in the books is also no reason for rejecting the books of accounts of the appellant. Dissatisfaction of the Assessing Officer with regard to the completeness or correctness of books of accounts need to be explicit and with reasons so as to bring on record, the effect of examination of incomplete or incorrect books of accounts which can be a ground to conclude to reject the books of accounts of the appellant. The Assessing Officer did not summon the parties u/s 131 or issued notices u/s 133(6) and made necessary enquiries regarding these parties. Rather the confirmations placed on record by the appellant were the banking channels only.

10.3 The Assessing Officer did not bring on record any adverse finding with regard to the maintenance of books of accounts to state or to show that there was a change in the method of accounting followed by the appellant as provided in section 145(1) and 145(2) or in the manner in which the appellant was regularly following the accounting principles. It is also pertinently mentioned here that after rejecting the books of accounts, the assessment was not framed by the Assessing Officer as per the provisions laid down in section 1920 the IT Act but was framed u/s 143(3) The Assessing Officer did not bring any adverse material on record with corroborative evidences to state that the appellant



settled her liabilities were fictitious liabilities outside the books of accounts or that the abilities did not exist or that such in the absence of any such finding this observation of the Assessing Officer is based on doubts surmises and conjectures in case, the Assessing Officer found that there was a cessation of liabilities in some manner the same should have been dealt with by invoking and applying the provisions of sec. 41 of the IT Act, 1961 But no such action was found to be taken by the Assessing Officer I have also examined the order sheets recorded by the Assessing Other dated 30.11.2011 and 15.12.2017 and find declared by the appetent that there was no such reason which can be made the basis for rejecting the books results”

6. In view of the above, we are of the considered opinion that no substantial question of law can be said to arise in the instant appeal. It consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
FEBRUARY 22, 2024/*neha*